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99TH CONGRESS *1st Session*	SENATE	REPORT 99-162

BALANCED BUDGET—TAX LIMITATION CONSTITUTIONAL AMENDMENT

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ON

S.J. Res. 13

together with

ADDITIONAL AND MINORITY VIEWS

OCTOBER 23 (legislative day, OCTOBER 21), 1985.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
52-917 O WASHINGTON : 1985

5523-9

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CONTENTS

		Page
I.	Text of Senate Joint Resolution 13	1
II.	Summary	2
III.	Concept of Senate Joint Resolution 13	4
IV.	Provisions of Senate Joint Resolution 13	11
V.	History of Senate Joint Resolution 13	12
VI.	History of constitutional amendment effort	18
VII.	History of balanced budget concept	21
VIII.	Senate Joint Resolution 13 and the Constitution	28
IX.	Economic background	37
X.	Statutory law versus constitutional amendment	44
XI.	Detailed analysis of Senate Joint Resolution 13	45
XII.	Enforcement	64
XIII.	State experience	71
XIV.	Public attitudes on a balanced budget amendment	80
XV.	Some questions concerning Senate Joint Resolution 13	80
XVI.	Regulatory impact statement	85
XVII.	Changes in existing law	85
XVIII.	Cost of the legislation	85
XIX.	Conclusion	86
Additional views of Mr. Denton		94
Additional views of Mr. Heflin		97
Minority views of Mr. Mathias		99
Minority views of Mr. Metzenbaum		102
Minority views of Mr. Simon		112

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OCTOBER 23 (legislative day, OCTOBER 21), 1985.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S.J. Res. 13]

The Committee on the Judiciary, to which was referred the joint resolution (S.J. Res. 13) proposing an amendment to the Constitution to require a balanced Federal budget and to limit taxing and spending, having considered the same, reports favorably thereon with amendments and an amendment to the title and recommend that the joint resolution as amended do pass.

I. TEXT OF SENATE JOINT RESOLUTION 13

The text of Senate Joint Resolution 13 as reported by the Committee on the Judiciary reads as follows:

Joint resolution proposing an amendment to the Constitution relating to a Federal balanced budget and tax limitation

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States

within seven years after its submission to the States for ratification:

"ARTICLE —

"SECTION 1. Prior to each fiscal year, the Congress shall adopt a statement for that year in which total outlays are not greater than total receipts. The Congress may amend such statement provided amended outlays are not greater than amended receipts. With the approval of three-fifths of the whole number of both Houses, the Congress, in such statement, may provide for a specific excess of outlays over receipts. Actual outlays shall not exceed the outlays set forth in such statement.

"SECTION 2. Total receipts in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the previous year, unless a majority of the whole number of both Houses shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.

"SECTION 3. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

"SECTION 4. This article shall take effect for the second fiscal year beginning after its ratification.".

The proposed amendment is cosponsored by the following Members of the Senate: Mr. Thurmond, Mr. Hatch, Mr. DeConcini, Mr. Grassley, Mr. Denton, Mr. Heflin, Mr. Specter, Mr. Abdnor, Mr. Boren, Mr. Cochran, Mr. D'Amato, Mr. Goldwater, Mrs. Hawkins, Mr. Hecht, Mr. Lugar, Mr. Mattingly, Mr. McClure, Mr. Nickles, Mr. Nunn, Mr. Packwood, Mr. Proxmire, Mr. Quayle, Mr. Symms, Mr. Trible, Mr. Wallop, Mr. Wilson, Mr. Zorinsky, Mr. Laxalt, Mr. East, Mr. Exon, Mr. Helms, Mr. Simpson, Mr. Danforth, Mr. Garn, Mr. Pryor, Mr. Gramm, Mr. Boschwitz, Mr. Rudman, Mr. Murkowski, Mr. Dole, Mr. Humphrey, Mr. Warner, Mr. Johnston, Mr. Pressler, Mr. Burdick, Mr. Roth, Mr. Stevens, Mr. Kasten, Mr. Bentsen, Mr. Stennis, and Mr. McConnell.

II. SUMMARY

Efforts to secure a constitutional rule to require a balanced Federal budget and to limit the growth of Federal spending have intensified as the Federal government's persistent failure to balance its budget has produced debt of nearly $2 trillion ($2,000,000,000,000) and as the Federal share of the economy has continued to increase.

It is the Committee's view that, in large measure, the nation's economic problems are attributable to these facts. Unacceptable levels of inflation, and unemployment, as well as enormous foreign trade imbalances, can be traced directly or indirectly to the fiscal policies and practices of the national government.

In proposing Senate Joint Resolution 13, the Committee seeks to re-establish constitutional limitations upon Federal spending and deficit practices that existed in earlier years through an array of

formal and informal constitutional provisions and which have been eroded over the course of recent years. The abandonment of the "unwritten constitution" requirement of balanced budgets, the passage of the 16th Amendment, and the development of new judicial doctrines concerning the Federal spending authority are some of the features that have contributed to the present situation in which there is virtual absence of external constraints upon the ability of Congress to spend.

Specifically, the proposed amendment addresses a serious spending bias in the present fiscal process arising from the fact that Members of Congress do not have to cast votes in behalf of new taxes in order to accommodate new spending programs. Rather than having to cast such politically disadvantageous votes, they may either resort to increased levels of deficit spending or allow the tax system, through "bracket creep," to produce annual, automatic tax increases.

Members of Congress, thus, are free to respond to the concentrated pressures of spending interest groups—and reap the political advantages of doing so—without having to reap concomitant political disadvantages by reducing spending programs favored by some other spending interests or by expressly raising taxes.

The result is that spending continues inexorably to rise whatever the genuine will of the people. This result is an essentially undemocratic and unresponsive process that enables Members of Congress to avoid ultimate accountability for their spending and taxing decisions. It is the existence of this institutional bias that convinces this Committee that a constitutional solution is now required.

Senate Joint Resolution 13 proposes to overcome this spending bias by restoring the linkage between Federal spending and taxing decisions. It does not propose to read any specific level of spending or taxing forever into the Constitution and it does not propose to intrude the Constitution into the day-to-day spending and taxing decisions of the representative branch of the government. It merely proposes to create a fiscal environment in which the competition between the tax-spenders and the tax-payers is a more equal one—one in which spending decisions will once more be constrained by available revenues.

Section 1 of the amendment would establish a balanced budget as a norm of Federal fiscal policy. It could be overcome, however, by three-fifths votes in both Houses of Congress. Section 2 of the amendment would prohibit the Federal government from consuming an increasing share of the national economy unless Members of Congress were willing to go on record in support of the necessary taxes for doing this. The conjunction of sections 1 and 2 would create an effective spending limitation, unless Congress was willing to vote for new taxes to account for increased spending.

The Committee does not view this amendment as a panacea for the economic problems of the nation. Its Members have differing prescriptions for overcoming these problems. The Committee, however, does view the amendment as a major step toward securing a political environment in which fiscally responsible policies will be more easily attainable, as well as an environment more conducive to honest and accountable fiscal decision-making.

The Committee believes Senate Joint Resolution 13 to represent both responsible economic policy and responsible constitutional policy. It believes, too, that passage of this resolution would constitute an appropriate response by Congress to the pending applications by nearly two-thirds of the States for a constitutional convention on this issue.

In these views, the Committee believes that it is in agreement with President Ronald Reagan who wrote in 1980,

> Excessive Federal spending and deficits have become so engrained in government today that a constitutional amendment is necessary to limit this spending. I shall continue to emphasize the need for such an amendment.

And, in these views, the Committee believes that it is in agreement with the overwhelming number of the American people who have consistently expressed their support for such a constitutional amendment.

III. CONCEPT OF SENATE JOINT RESOLUTION 13

The primary purpose of Senate Joint Resolution 13 is to correct a bias in the present political process in behalf of ever-increasing levels of Federal government spending. Whether such spending is financed by higher taxes or new debt, most of the economic problems suffered by the nation in recent years are ultimately caused by excessive government spending. High interest rates, and the resulting decline in investment and productivity, as well as unacceptable levels of unemployment, all follow when the government uses an excessive share of the nation's resources, leaving too little for productive use by the private sector. If the Federal Reserve Board attempts to reduce these economic problems by increasing the money supply faster than increases in the supply of goods and services, inflation results.

While it is true that much of the enormous growth in Federal government spending over the past two decades may be a response to evolving notions of the role of the public sector on the part of the American citizenry—i.e., a genuine shift in the will and desire of the people—it is the contention of this Committee that a substantial part of this growth stems from far less benign factors.

In short, it is the Committee's view that the American political process is defective insofar as it is skewed toward artificially high levels of spending, i.e., levels of spending that do not result from a genuine will and desire on the part of the people. It is skewed in this direction because of the characteristics of the fiscal order that have developed in this country in recent decades. It is a fiscal order in which Members of Congress have every political incentive to spend money and almost no incentive to forego such spending. It is a fiscal order in which spending decisions have become increasingly divorced from the availability of revenues.

Concentrated benefits—dispersed costs

It is important first to understand what some economists and political scientist have described as the "concentrated benefit-dispersed cost" phenomenon. This describes the fact that the benefits

of any given spending program normally are concentrated within a relatively small class of beneficiaries, while the costs of such a program are dispersed throughout a relatively large class of persons, i.e., the taxpayers. Thus, those parties who benefit from a particular spending measure stand to benefit greatly while those who bear the costs are affected insignificantly. The Italian economist Pareto described it in these terms,

> Let us suppose that in a country of thirty million inhabitants it is proposed, under some pretext or other, to get each citizen to pay out one franc a year, and to distribute the total amount amongst thirty persons. Every one of the beneficiaries will receive one million francs a year. The two groups will differ very greatly in their response to this situation. Those who hope to gain a million a year will know no rest by day or night. They will win newspapers over to their interest by financial inducements and drum up support from all quarters. A discreet hand will warm the palms of needy legislators, even of ministers. . . .
>
> On the other hand, the despoiled are much less active. A great deal of money is needed to launch an electoral campaign. Now there are insuperable material difficulties militating against asking each citizen to contribute a few centimes. One has to ask a few people to make substantial contributions. But then, for such people, there is the likelihood that their individual contribution to the campaign against the spoliation will exceed the total amount they stand to lose by the measure in question. . . . When election day comes, similar difficulties are encountered.
>
> Those who hope to gain a million apiece have agents everywhere, who descend in swarms on the electorate, urging the voters that sound and enlightened patriotism calls for the success of their modest proposal. They will go further if need be, and are quite prepared to lay out cash to get the necessary votes for returning candidates in their interest. In contrast the individual who is threatened with losing one franc a year—even if he is fully aware of what is afoot—will not for so small a thing forego a picnic in the country, or fall out with useful or congenial friends, or get on the wrong side of the mayor or the perfect. In these circumstances the outcome is not in doubt; the spoilators will win hands down. *Cours d'Economie Politique (1896)*

More recently, Arthur Burns, former Chairman of the Federal Reserve Board, expressed similar thoughts,

> The proximate causes of this governmental bias are quite clear. In general, spending programs are more popular with people than higher taxes. The potential beneficiaries of a spending program are often a numerical minority, but they have a stronger incentive to keep informed, to organize, and to lobby for their favorite program than those who bear the cost have to oppose it. The rising cost of political campaigns and the concurrent proliferation of fundraising committees put intense pressure on legislators

> to vote for spending programs favored by such groups. We may, in fact, be entering an era in which governmental processes are overwhelmed by the naked demands of increasingly well-organized and effective interest groups. It is this concern that has led me to look with favor on even preemptory devices for offsetting the existing bias toward larger Federal spending and borrowing. *AEI Economist, April 1979*

The competition, then, between the tax-spenders and the taxpayers is a highly unequal one; it is not at all surpising that the former should prevail so frequently. It is simply not worth the while of the individual taxpayer to spend as much time and effort to save himself a few cents or a few dollars on some program as it is for spending interests to secure millions or even billions of dollars for themselves. The spending interests tend to be intense and passionate in focusing upon individual spending measures likely to accrue to their benefit, while those who logically would be the most concerned about such spending, the taxpayers, tend to be diffuse and unorganized. Spending interests are politically visible and articulate and able to reward or punish legislators with their organized electoral support or non-support. Meanwhile, taxpayers are politically inarticulate, only barely able to perceive their self-interest in the context of isolated pieces of legislation. It is only when the spending programs are aggregated that the taxpayer begins to feel the full impact of such spending. Thus, it is only natural that legislators, however sincerely committed to fiscally responsible public policies, should be sensitive and responsive to the concerns of those who lobby for new or expanded spending initiatives. As Professor Charles Baird of the University of California at Hayward has observed,

> Whenever government programs are considered one by one, there is a bias toward government growth. Each program has a well-defined constituency that receives positive benefits therefrom. In many cases, the benefits from a particular program to a particular person represent a large part of that person's total income, while the tax cost to the beneficiary of that program is miniscule. Such direct beneficiaries of program A therefore are strongly motivated to organize, work, and lobby for the the adoption and growth of that program. There is no countervailing incentive for taxpayers in general to organize, work, and lobby against program A in isolation because any individual taxpayer's share of program A is miniscule. Since elected representatives inevitably respond to lobbying efforts, there is a high probability that program A will be adopted even if the sum of the benefits therefrom are less than the sum of the costs.

The purpose of Senate Joint Resolution 13 is to create a more equal competition between spending interests and taxpayer interests by reducing the structural bias toward higher spending within the Federal fiscal system that contributes to the current imparity. By reducing the bias, and creating a more neutral environment

within which this competition can take place, it is the expectation of the Committee that the representative processes will be more responsive and accountable to the genuine desires and interests of the public at large with respect to levels of public expenditures. As Professor Allan Meltzer of Carnegie-Mellon Universtiy has observed—

> Only by changing the ground-rules under which spending decisions are made can we expect to obtain the outcome which people desire.

The proposed amendment addresses two elements of the spending bias: the access members of Congress have to deficit spending and the availability to members of Congress of annual, automatic tax increases. Each of these elements enable Members of Congress to avoid having to vote new taxes in order to finance new spending.

Deficit spending

The first element of the spending bias relates to the virtually unlimited access that members of Congress have to deficit spending. As the "unwritten constitution" requirement of budget balance has been disregarded in recent years, Members of Congress no longer are constrained in their ability to increase spending by the concomitant need to increase ordinary revenues. Permissible levels of spending no longer are defined, as they traditionally have been, by levels of revenue available. In consequence, Members of Congress are free to satisfy the demands of particular spending interests, and to obtain the resulting political advantages, without having either to (a) reduce spending for some other spending interest and incur the resulting political disadvantages, or (b) increase tax revenues and incurring the resulting political disadvantages.

Members of Congress do not have to reduce levels of spending for one program in order to accommodate increases in other programs because there is no effective limit as to how much Congress may spend in its budget. Once the traditional linkage has been severed between spending and revenues, there is no need for Members to establish priorities as between alternative spending proposals; each can be satisfied simply by increasing the level of the deficit. The availability of deficit spending enables Members to avoid the hard political decision of having to choose among spending proposals and thereby ensure for themselves some element of political disadvantage as well as political advantage.

Members of Congress do not have to increase revenues in order to accommodate increased spending because levels of spending no longer are related in any meaningful way to levels of revenue. Thus, not only is there no need for Congress to antagonize any other spending interest in the process of supporting a given spending measure, but there is no need to antagonize taxpayers generally by appearing to raise their tax burdens. Again, there is no element of political disadvantage Members of Congress are required to incur in order to reap the political advantages of responding to the spending interests.

In this respect, the availability of unlimited deficit spending allows the political costs of spending measures to be deferred in time, while enabling the political benefits to be enjoyed immediate-

ly. While the benefits of the measure usually will be understood immediately by its beneficiaries, the costs—in the form of higher future taxes, higher future inflation, and higher future interest rates—usually will be evident only at some remote time. Indeed, there may be no political costs whatsoever unless those who suffer from these economic ills are sophisticated enough to understand the cause-effect relationship between the earlier spending and the later symptoms.

Automatic tax increases

The second element of the spending bias addressed by Senate Joint Resolution 13 relates to the access Members of Congress have, under our present system, to annual, automatic tax increases. As a result of the interaction between inflation (or real economic growth) and a progressive system of taxation, the public sector normally consumes a higher share of the national product each year. As individuals earn more dollars, whether they are real or nominal, an increasing share of these dollars are paid to the government in taxes. Economists have referred to this as "taxflation" or "tax bracket creep."

In consequence, Members of Congress do not have to expressly vote for higher taxes in order to increase revenue levels. As Professor Baird has observed.

> With "bracket creep", it is possible for members to raise taxes by doing nothing which is considerably less painful than raising taxes by voting to do so.

Such tax increases accrue automatically to Members of Congress, through inaction. Members are able to satisfy spending interests, and to obtain resulting political advantages, without having to explicitly raise taxes and incur the wrath of the taxpayers. There is no visible or apparent financing of increased spending revenues.

Approach of Senate Joint Resolution 13

In seeking to reduce the spending bias in our present system—the unlimited availability of deficit spending and the access to automatic tax increases—the major purpose of Senate Joint Resolution 13 is to ensure that, under normal circumstances, votes by Congress for increased spending will be accompanied either by votes (a) to reduce other spending programs or (b) to increase taxes to pay for such programs. For the first time since the abandonment of the traditional balanced budget requirement, Congress will be required to cast some politically difficult vote as a precondition for a politically attractive vote to increase spending.

Section 1 of the proposed amendment would address the first element of the spending bias—unlimited access by Members of Congress to deficit spending—by requiring a three-fifths vote of each House of Congress before the Federal government could engage in such spending. Such a procedure would not prohibit deficit spending, but would simply reestablish, as a norm, a budget in balance rather than one in deficit. A consensus greater than a normal majority would be required to violate this norm. Unless such a consensus existed, Congress would be bound in its spending by its available revenues and would be forced to account for new spending in

one program area by either reduced spending in another program area or by increased taxes. The political advantages resulting from support for new spending then would be matched, at least to some degree, by countervailing political disadvantages.

Section 2 of the proposed amendment would address the second element of the spending bias—the availability of annual, automatic tax increases—by requiring Congress to cast an express vote to increase taxes before it could take advantage of increased levels of revenue. Otherwise, the level of revenues available to the Federal government, relative to the national economy, would not be permitted to increase from year to year. In the absence of an express tax increase voted by Congress, the public sector could no longer, as is now the case, grow at the expense of the private sector.

While Section 1 would ensure, as a norm, that Federal spending is matched by Federal revenues, Section 2 would ensure that such revenues are not raised without political cost to Members of Congress. It would also ensure that the balanced budget is not regularly balanced at increasingly high levels by permitting taxes to increase inexorably each year. Congress no longer could remain silent and allow taxes to rise automatically, in the process undermining the most elementary notions of political accountability. Before Congress could make available to itself greater amounts of revenue for new spending initiatives, it would have to stand up in view of the public and place itself on record in behalf of such increased revenues.

It is important also to recognize the impact upon the budget process of Section 1 operating in conjunction with Section 2. The revenue limitation provision in Section 2 and the balanced budget provision in Section 1 work to produce an effective spending limitation as well.

Professor Milton Friedman observes in this regard,

> Both the concepts of balanced budget and spending limitation are right and are combined in Senate Joint Resolution [13]. It is more sophisticated than it appears on the surface. Sections 1 and 2 together achieve a limit on total spending and a balanced budget statement. It is an effective measure, in my opinion to limit government receipts and spending, on the one hand, and to produce a balanced budget on the other.

As a result, Senate Joint Resolution 13 effects a subtle, but important, change in the psychology of the budget process. Under the present system, each spending interest, in effect, competes with the taxpayers to raise the total ante in the Federal treasury. As noted, these spending interests normally prevail in this competition. Under a system, however, in which some form of spending ceiling is in effect, these same interests suddenly will be competing with *one another* in order to ensure themselves a certain proportion of a fixed ante in the Federal treasury. Not only will spending interests have to convince Congress that their favored programs merit funding at a certain level, but they will, in addition, have to establish the *priority* of their programs. A spending ceiling comprised of something beyond mere Congressional self-restraint will force Members of Congress to view spending requests in terms of *relative*

desirability, not simply in terms of whether or not a program is desirable at all. An element of competition among the spending interests will be introduced into the budget process, undoubtedly to the long-term interests of those who finance the spending programs favored by these interests.

Thus, the proposed amendment would make it easier for well-meaning, but beleaguered Members of Congress to exercise fiscal responsibility in making their policy decision. There would be an external constraint, something beyond their own ability to resist the importunities of the spending interests, upon which they could rely. As Professor Roger Freeman of the Hoover Institution has noted:

> It is not that Members of Congress do not wish to produce a balanced budget but that under the circumstances they can only do so at a grave political risk to their survival. They need a defense against excessive demands which allows them to say "no" to a multitude of pressure groups. Such a defense cannot be built by statute because any act of Congress can be amended or repealed by this Congress or the next. Only a constitutional amendment can impose credible and effective spending restraints.

Professor James Buchanan goes on to elaborate:

> The fault lies not in the bad intentions of elected politicians. The basic causes for the dramatic, and readily observable, shift in U.S. fiscal habits after World War II and notably after 1960 are not hard to identify. Keynesian teachings had succeeded in effectively repealing an important element of the unwritten fiscal constitution within which American politics had been carried out throughout almost two centuries of its history.

Much of the argument in this and other sections has drawn upon Professor Buchanan's work, in conjunction with Professor Richard Wagner, *Democracy in Deficits*, Academic Press (1977).

In summary, the purpose of Senate Joint Resolution 13 is to eliminate political process which allows members to avoid having to vote for higher taxes in order to pay for higher spending and to establish a more genuinely neutral environment within which the budget competition occurs. The proposed amendment does not define what constitutes or what does not constitute a responsible budget, but only defines the institutional framework within which such budgets can be put together. Rather than Federal Government spending increasing inexorably, whatever the desires of the citizenry, the amendment would ensure that such spending is set at levels more reflective of their genuine desires.

THE SPENDING BIAS IN OUR PRESENT FISCAL SYSTEM THAT PRODUCES UNDEMOCRATIC RESULTS WHICH DO NOT REFLECT THE GENUINE WILL OF THE PEOPLE

Elements responsible for bias	Operation of bias	Approach of S.J. Res. 13
Access to borrowed fund (accessibility of deficit spending)	Members of Congress do not have to vote for increased taxes in order to finance increases in spending. They may simply engage in greater levels of deficit spending.	Would eliminate the two elements of our fiscal system responsible for the spending bias: Sec. 1 established a norm of a balanced budget and requires a three-fifths majority to engage in deficit spending. Sec. 2 requires an explicit record vote of Congress before the Federal Government may collect a greater share of the national income. Given public opinion today, secs. 1 and 2 would create a spending limit. Pending interests would compete against one another for a share of a fixed spending level rather than against taxpayers for an increasingly high spending level. Members would be forced to balance countervailing political advantages and disadvantages in voting for new spending programs.
Availability of automatic tax increases ("taxflation" or "bracket creep")	Members can satisfy spending interests and incur resulting political advantages without having to incur countervailing political disadvantages by voting to raise taxes or by voting to reduce programs favored by other spending interests.	

IV. PROVISIONS OF SENATE JOINT RESOLUTION 13

Section 1

Section 1 of the proposed amendment addresses the present spending bias resulting from an unlimited access Congress has to deficit spending. It would establish the norm of a balanced Federal budget, i.e., one in which government outlays do not exceed government receipts. This norm could be overcome upon the vote of three-fifths of the total membership of each House of Congress to approve a specific level of deficit. Congress would be required to adopt an initial budget for a given fiscal year prior to that fiscal year, but would be permitted to amend such budget at any subsequent time. Both the initial budget and any amended budget would be subject to the limitations established in this section. Congress and the President both would have continuing responsibilities to ensure that the spending levels established in the budget were maintained.

Section 2

Section 2 of the proposed amendment addresses the spending bias resulting from the access Congress has to annual, automatic tax increases ("tax bracket creep"). It is designed to ensure that the balanced budget required in Section 1 does not occur at levels of spending and taxing that result in the public sector continually consuming an increasing portion of the national product. Under this section, Congress would be required to adopt a level of receipts in its budget for any fiscal year that represented a proportion of the national economy no greater than that for the previous year.

Operating in conjunction with the balanced budget requirement of Section 1, Section 2 would establish a similar ceiling on outlays for any fiscal year. This ceiling could be overcome whenever an absolute majority of the membership of each House of Congress passed a bill approving specific additional receipts. Such bill would be subject to Presidential approval or disapproval. Tax indexing would be one means by which compliance could generally be achieved with this provision.

Section 3

Section 3 would authorize Congress to waive any of the requirements imposed upon it by this amendment for a fiscal year in which a declaration of war is in effect.

Section 4

Section 4 establishes as the effective date of this amendment the second fiscal year beginning after its ratification. The requirements of this amendment would, in their entirety, be applicable for such fiscal year.

V. HISTORY OF SENATE JOINT RESOLUTION 13

In 1975, efforts commenced within the States to petition Congress for a constitutional convention under Article V of the Constitution for the purpose of considering a balanced budget constitutional amendment. Under Article V, there are two methods by which the Constitution can be altered. The first method, the method by which each of the first 26 amendments to the Constitution has been effected, requires the proposal of an amendment by two-thirds of each House of Congress, and ratification by three-fourths of the States. The second method, that being currently pursued by the States with regards to the balanced budget amendment, requires the proposal of an amendment by a constitutional convention called by Congress in response to the applications of two-thirds of the States. Ratification by three-fourths of the States is then necessary before the amendment becomes part of the Constitution. (For more discussion of this procedure, see Senate Report No. 99-135, the "Constitutional Convention Implementation Act".)

While the second method has never been directly responsible for securing an amendment to the Constitution, efforts in the early years of this century by the States to call a convention to propose an amendment to provide for the direct election of Senators were forestalled only when Congress on its own proposed the 17th Amendment.

Although sporadic efforts at calling a national convention on the subject of a balanced budget had been made in the past, the effort begun in 1975—under the leadership of such organization as the National Taxpayers Union and the American Farm Bureau Federation—is the first to attract serious national attention. To date, thirty-two states (see Table 1) have applied for a constitutional convention on this subject, although there remains some dispute as to whether or not each of these applications are constitutionally valid. Under Article V, Congress is "obliged" (to use the words of Alexan-

der Hamilton in The Federalist No. 85) to call a convention upon the applications of 34 of the present fifty states.

A companion effort in the States also deserves mention for contributing to a political environment receptive to constitutional initiative concerning spending and taxing. Under the leadership of the National Tax Limitation Committee, a growing number of States in the mid 1970's began to consider placing spending and taxing limitations within their constitutions (see section XIII). The most highly publicized of these efforts were the successful Proposition 13 and Proposition 4 efforts in California.

In response to these efforts in the States, as well as out of their own conviction as to the need for a constitutional restraint upon Congress' fiscal authority, members of the Senate Judiciary Subcommittee on the Constitution began efforts early in the 96th Congress to develop a constitutional proposal satisfying State demands for an effective and appropriate limitation upon the fiscal authority of Congress. Given the broad range of diverse constitutional amendments introduced by different members to require balanced budgets or to establish various spending and tax limitations, the priority of this Committee was to develop a consensus measure that would attract the support of as many proponents of a constitutional initiative as possible. The achievement of this consensus has been the focus of much of the efforts that have taken place in the Committee on the Judiciary since that time.

TABLE 1.—STATE LEGISLATURES WHICH HAVE PASSED BALANCED BUDGET AMENDMENT APPLICATIONS

State	Measure	Year adopted
Alabama	HJR 227, Act 302	1976.
Alaska	HJR 17	1982.
Arizona	SJR 1002, HCM 2003	1979, 1977.
Arkansas	HJR 1	1979.
Colorado	SJM 1	1978.
Delaware	HCR 36	1975.
Florida	Sen. Memorial No. 234, HM 2801	1976.
Georgia	Res. Act No. 93, HR No. 469-1267	1976.
Idaho	HCR 7	1979.
Indiana	SJR 8	1979.
Iowa	SJR 1	1979.
Kansas	SCR 1661	1978.
Louisiana	SCR 4, SR 73, HCR 269	1979, 1978, 1975.
Maryland	SJR 4 (Original), Md JR 77 (Enrolled)	1975.
Mississippi	HCR 51	1975.
Missouri	SCR 3	1983.
Nebraska	LR 106	1976.
Nevada	SJR 8, SJR 2	1979, 1977.
New Hampshire	HCR 8	1979.
New Mexico	SJR 1	1976.
North Carolina	Resolution 5	1979.
North Dakota	SCR 4018	1975.
Oklahoma	HJR 1049	1976.
Oregon	SJ Memorial No. 2	1977.
Pennsylvania	HR 236	1976.
South Carolina	S. 1024, S. 670	1978, 1976.
South Dakota	SJR 1	1979.
Tennessee	HJR 22	1977.
Texas	HCR 13, HCR 31	1978, 1977.
Utah	HJR 12	1979.

TABLE 1.—STATE LEGISLATURES WHICH HAVE PASSED BALANCED BUDGET AMENDMENT APPLICATIONS—Continued

State	Measure	Year adopted
Virginia	SJR 36	1976
Wyoming	HJR 12 (Original) JR 1 (Enrolled)	1977

Source: National Taxpayers Union

Eight days of hearings were held on this subject during the 96th Congress by the Subcommittee on the Constitution. On March 12, 1979, testimony was heard from Senator Robert Dole of Kansas, Senator Edmund Muskie of Maine, Senator Strom Thurmond of South Carolina, Senator John Stennis of Mississippi, and Senator Harry Byrd, Jr. of Virginia. On May 23, 1979, testimony was heard from Senator James McClure of Idaho, Secretary of Treasury Michael Blumenthal, Senator Dennis DeConcini of Arizona, and Senator Carl Levin of Michigan. On July 25, 1979, testimony was heard from Senator Richard Lugar of Indiana, Senator John Heinz of Pennsylvania, Senator Richard Stone of Florida, and Senator Malcolm Wallop of Wyoming. On October 4, 1979, testimony was heard from Lane Kirkland, Secretary-Treasurer of the AFL-CIO, Thomas O'Neil, III, Chairman of Citizens for the Constitution, James Davidson, Chairman of the National Taxpayers Union, and Marshall Beil, a representative of the New York Bar Association's Committee on Federal Legislation. On October 11, 1979, testimony was heard from Senator David Pryor of Arkansas, Alice Rivlin, Director of the Congressional Budget Office, Martin Gerber, Vice-President of the United Auto Workers, Allan Grant, President of the American Farm Bureau Federation, and Jay Van Andel, Chairman of the Board of the United States Chamber of Commerce.

On November 1, 1979, testimony was heard from Senator Roger Jepsen of Iowa, Alan Greenspan, former member of the Council of Economic Advisers, Philip Saunders, Professor of Economics at the University of Indiana, Richard Everett, Vice President of the Chase Manhattan Bank, Merlyn Carlson, Vice-President of the National Cattlemen's Association, Lewis Uhler, President of the National Tax Limitation Committee, and Craig Stubblebine, Director of the Center for the Study of Law Structures at Claremont Men's College. On January 14, 1980, testimony was heard in Mobile, Alabama from Senator Thad Cochran of Mississippi, Ronald E. Bird, Professor of Economics at the University of Alabama, Tyrone Black, Professor of Economics at the University of Southern Mississippi, Kenneth Giddens, President of WKRG-TV, William Hearin, Publisher of the Mobile Press Register, and Thomas Druey, Publisher of Quest Publications. On February 22, 1980, testimony was heard in Salt Lake City, Utah from Robert Crawford, Professor of Economics at Brigham Young University, Jefferson Fordham, Professor of Law at the University of Utah, Timothy Meeding, Assistant Professor of Economics at the University of Utah, Jewell Rasmussen, University of Utah, Glenn Lewis, Utah Council of Small Business, David Tomlinson, Chairman of the Utah delegation to the White House Conference on Small Business, Jack Olson, Utah Taxpayers Association, Charles Ackerlow, businessman in Salt

Lake City, Robert Hansen Utah Attorney General, and Utah State Representative Norman Bangerter, Gray Brockbank, and Kevin Watt.

Following these hearings as well as extensive consultation with the Senate Balanced Budget Caucus, under the leadership of Senators Richard Lugar, David Boren, and William Armstrong, five members of the Subcommittee on the Constitution introduced Senate Joint Resolution 126 (Senators Orrin Hatch, Strom Thurmond, Dennis DeConcini, Howell Heflin, and Alan Simpson). On December 18, 1979, this measure was reported out of the Subcommittee on the Constitution by a 5-2 vote. On March 15, 1980, however, Senate Joint Resolution 126 was defeated by a narrow 9-8 margin in the full Committee on the Judiciary.

Senate Joint Resolution 126 was re-introduced during the 97th Congress, first as Senate Joint Resolution 9, then as Senate Joint Resolution 43, and finally as Senate Joint Resolution 58 with the same principal sponsors as during the previous Congress. A companion bill (H.J. Res. 100) was introduced in the House by Rep. Skip Bafalis of Florida. Four additional days of hearings were conducted, again by the Senate Subcommittee on the Constitution under the chairmanship of Senator Hatch. On March 11, 1981, testimony was heard from Senator William Armstrong of Colorado, Senator David Boren of Oklahoma, Senator Richard Lugar of Indiana, Senator Howell Heflin of Alabama, State Senator James Clark of Maryland, and Roger Freeman, Senior Fellow, Hoover Institution. On April 9, 1981, testimony was heard from Senator John Heinz of Pennsylvania, Laurence Silberman, Vice-President of Crocker National Bank, San Francisco, California, Lowell Harris, Professor of Economics at Columbia University, Charles Baird, Professor of Economics at California State University (Hayward), Harry Bell, President, South Carolina Farm Bureau, representing the American Farm Bureau Federation, and Professor George Haimbaugh, Professor of Law at the University of South Carolina. On May 20, testimony was heard from George Snyder, President, David Keating, Legislative Director, National Taxapyer's Union, William Shaker, Executive Vice President of the National Tax Limitation Committee, Craig Stubblebine, Director of the Center for the Study of Law Structures at Claremont Men's College, and former Senator Carl Curtis of Nebraska. On May 29, testimony was heard in Phoenix, Arizona from Alvin Rabushka, Senior Fellow, Hoover Institution, Robert Matthews, Phoenix Chamber of Commerce, Melvin Morris, Arizona Tax Research Association, Robert Robb, Arizona Chamber of Commerce, Paul Jones, Valley National Bank, and James Weaver, Sun City Homeowners Association.

On May 6, 1981, the Subcommittee on the Constitution favorably reported out Senate Joint Resolution 58 by a 4-0 vote following an amendment in the nature of a substitute offered by Senator Hatch. While maintaining the basic concept of Senate Joint Resolution 126 and its successors, a number of substantive and perfecting changes were made, some drawn from such measures as Senate Joint Resolution 56 introduced by Senators Heinz and Nunn. On May 19, 1981, the full Senate Committee on the Judiciary favorably reported out S.J. Res. 58 by an 11-5 vote, following several additional technical changes offered by Senator Dole.

On July 12, 1982, the Senate began consideration of S.J. Res. 58. Following the adoption of a package of amendments by Senators Domenici and Chiles (clarifying that nothing in the amendment was designed to confer impoundment authority upon the President; altering the base period in section 2 for determining growth in the economy; and adding a new section obligating Congress to "enforce and implement" the provisions of the amendment); and the acceptance of an extremely controversial amendment by Senator Armstrong (establishing a permanent level of national debt and requiring a three-fifths vote to increase the size of the debt), the Senate on August 4, 1982 by a vote of 69–31 proposed S.J. Res. 58 as an amendment to the United States Constitution. This marked the first time that either House of Congress had approved such a measure.

On October 1, 1982, the House of Representatives, following a successful discharge petition effort, considered H.J. Res. 450, the House counterpart of S.J. Res. 58. This occurred under the leadership of Rep. Barber Conable (R–NY) and Rep. Ed Jenkins (D–Ga.). Although a substantial majority of the House voted in behalf of the amendment it fell short of the necessary two thirds vote by a 236–187 margin. This followed the rejection of a substitute balanced budget amendment which was endorsed by a sufficient number of Members such that more than two-thirds of the Members of the House were recorded as being in favor of one form or another of a balanced budget constitutional amemdment.

In the 98th Congress, S.J. Res. 5 was introduced on January 26, 1983, and referred to the Senate Judiciary Committee. On February 22, 1983, S.J. Res. 5 was referred to the Subcommittee on the Constitution. The Subcommittee, chaired by Senator Orrin G. Hatch, held two days of hearings on the resolution. On December 12, 1983, the Subcommittee met in Los Angeles, California, and received testimony from Senator Pete Wilson of California; James D. Davidson, National Taxpayers Union; Congressman William D. Dannemeyer of California; Lew Uhler, National Tax Limitation Committee; Roy Ash, Committee for a Responsible Federal Budget; Professor John T. Noonan, University of California Berkeley Law School; Gerald W. McEntee, President of the American Federation of State, County, and Municipal Employees; Martyn Hopper, National Federation of Independent Business; Richard Johnson, California Chamber of Commerce; Carl Jones, Legislative Director of Congress of California Seniors; John Gamper, California Farm Bureau Federation; George C. Shaw, California Teachers Association; Professor Robert Goldstein, UCLA School of Law on behalf of the Southern California Region of the American Jewish Congress; and Professor William Craig Stubblebine, Claremont-McKenna College. On March 6, 1984, the Subcommittee held a second day of hearings. The following witnesses and organizations presented testimony: James Davidson, National Taxpayers Union; Carol Cox, Committee for a Responsible Federal Budget; Lew Uhler, National Tax Limitation Committee; Professor Steven A. Reiss; Professor William Craig Stubblebine; the National Association of Manufacturers; the National Association for the Advancement of Colored People (NAACP); the National Education Association; the Ameri-

can Farm Bureau Federation; and the National Association of Realtors.

On March 15, 1984, the Subcommittee on the Constitution approved S.J. Res. 5 by a 4–1 vote and recommended the measure to the full Committee. On September 13, 1984, the Senate Judiciary Committee approved S.J. Res. 5 with an amendment offered by Senator DeConcini approved on June 7, 1984, by the margin of 11–4. The DeConcini amendment added a new section 3 relating to executive authority and renumbered subsequent sections. Due to an early adjournment to accommodate the 1984 presidential election, time ran out in the 98th Congress before S.J. Res. 5 could come to the Senate for a vote.

In the 99th Congress, S.J. Res. 13, a resolution identical to S.J. Res. 5 from the previous Congress, was introduced on January 3, 1985, the first day of the new Congress. It was referred to the Senate Judiciary Committee and subsequently to the Subcommittee on the Constitution. On May 7, the Subcommittee held a hearing on S.J. Res. 13. The following witnesses were heard: Senator Pete Wilson of California; Governor Dick Thornburgh of Pennsylvania; the Honorable Manuel Johnson, Assistant Secretary of Treasury; Mr. Roy L. Ash, Committee for Economic Development; Dr. Martin Anderson, Senior Fellow, Hoover Institution; Dr. Rudolf Penner, Director, Congressional Budget Office.

On May 15, 1985, the Subcommittee held a markup to consider S.J. Res. 13. On a voice vote, the Subcommittee accepted a substitute amendment offered by Senator Strom Thurmond of South Carolina. This amendment streamlined S.J. Res. 13, but left its substance unaltered. On a vote of 3 to 2, the Subcommittee rejected an amendment by Senator Paul Simon of Illinois which would have deleted Section 2 of the Resolution (providing that total receipts shall not grow faster than the rate of increase in the national income). Finally, on a unanimous 5–0 vote, the Subcommittee approved S.J. Res. 13 as amended by the Thurmond amendment.

On July 11, 1985, following extensive discussion in the full Committee on the Judiciary and the adoption of a clarifying amendment offered by Senator Heflin, the Committee voted 11–7 to favorably report S.J. Res. 13 to the Senate. The following Members voted in favor of the resolution:

Thurmond
Laxalt*
Hatch
Simpson
East
Grassley
Denton
Specter
McConnell
DeConcini
Heflin

The following Members voted against reporting the resolution:

Mathias*
Biden

Kennedy*
Byrd
Metzenbaum
Leahy*
Simon*

*By proxy.

In addition to extensive input from the Balanced Budget Caucus and other Senators not members of the Committee, the Committee on the Judiciary, in developing the proposed amendment has benefitted significantly from consultation with large numbers of economists, constitutional scholars, state legislators, and other interested individuals and organizations. The National Tax Limitation Committee and the National Taxpayers Union deserve particular mention in this regard, as does the Center for the Study of Law Structures at Claremont Men's College under its director, Professor Craig Stubblebine.

VI. HISTORY OF CONSTITUTIONAL AMENDMENT EFFORT

Efforts to secure a constitutional balanced budget requirement have become more intense as the Federal government has run more frequent budget deficits of increasingly large magnitude. During the 19th century, when the balanced budget norm was effectively part of the "unwritten constitution" of the land, there was little need for Congress to focus on this problem. The deficits that did occur generally were insignificant, often related to wartime circumstances, and generally were compensated for by subsequent government surpluses. The occasionally troublesome deficit, such as those developing from the depression of the early 1870's, met with legislative responses designed to secure their elimination.

Following a series of recommendations by Presidential commissions on Federal budgetary practices and reforms, Congress in 1909 approved the Sundry Civil Appropriation Act (35 Stat. 959), the first major legislative initiative seeking to establish explicit limitations upon government fiscal practices. This act directed the president and the Secretary of the Treasury to propose measures to reduce expenditures or increase revenues if a deficit appeared probable. Though the Act did not expressly mandate a balanced budget, it clearly suggested that efforts to achieve such a balance should precede the issuance of new debt. World War I soon diverted attention from this issue.

Following the War, Congress made renewed efforts to introduce broad budgetary reforms. In 1919, the Victory Liberty Loan Act (40 Stat. 1311) established a sinking fund for debt retirement. During the decade of the 1920's, this resulted in a one-third reduction in the level of the total national debt, from approximately $24 billion to $16 billion. As in early years, the clear national consensus in support of the balanced budget principle resulted in little need to focus Congressional attention on statutory or constitutional legislation to mandate a balanced budget. Indeed, the policy of gradual debt retirement during the 1920's necessitated Congressional commitment to regular surplus budgets.

The Budget and Accounting Act of 1921 (42 Stat. 20) was important both in defining the role of the executive and legislative

branches in the budgetary process and in formally incorporating government expenditures and revenues into an official budget. Under the Act, the President was to take responsibility for formulating an initial budget and submitting it on an annual basis to the Congress. Congress then was to act on the recommendations in this budget.

Not until the mid-1930's did concern about budget deficits find regular expression on the floor of Congress. The Great Depression was accompanied by large, uninterrupted deficits between 1931 and 1940. In addition, such deficits generally were of a significantly larger scale than earlier defícts. A debate emerged during this period—one continuing to this day—as to whether such deficits were necessary for government management of economic crises, or whether they in fact contributed to the creation of such crises.

In 1935, Senator Millard Tydings of Maryland introduced the first measure seeking to require an annual balanced Federal budget (S.J. Res. 36, 74th Congress). This resolution sought to prohibit appropriations from exceeding revenues, unless new taxes or debt were reauthorized. Any new debt incurred would have to be liquidated over a 15 year period. In the following year in the House of Representatives, Representative William McFarlane of Texas introduced a bill to invest authority in the President to modify tax rates in order to cover proposed deficits in the budget (H.R. 11895, 74th Congress). Neither the Tydings nor the McFarlane proposals were considered seriously by Congress.

The first constitutional amendment to balance the budget was proposed in 1936 by Minnesota Representative Harold Knutson (H.J. Res. 579, 74th Congress). The proposed measure established a per capita limitation on the Federal public debt during peacetime. Deficits might be run by Congress, but only to the extent that the per capita ceiling was not breached. The particular limit suggested by this measure was lower than the outstanding debt at the time and would have mandated significant budgetary surpluses in order to conform to the level.

Again, a World War distracted attention from efforts to secure annual balanced budgets, although Senator Tydings and Representative Wesley Disney of Oklahoma joined during this period to introduce several constitutional amendments to prohibit government appropriations from exceeding receipts (e.g., S.J. Res. 97 and H.J. Res. 195, 78th Congress).

Following World War II, the balanced budget debate was resumed. Senate Joint Resolution 61, introduced by Senators Tydings and Styles Bridges of New Hampshire, was reported out by the Committee on Appropriations in 1947 (Sen. Rept. No. 80-154) but received no further consideration. In 1949, the Senate unanimously approved a proposal by Arkansas Senator John McClellan to require the President to submit for fiscal year 1951, in addition to his preferred budget, a balanced budget (S.J. Res. 131, 81st Congress). Congress then would compare these budgets in an effort to identify possible areas of expenditure reductions or revenue increases. This proposal was stricken during conference, however. A similar proposal during the subsequent Congress also failed to proceed through the entire legislative process (H.R. 1689, 82d Congress).

During the 1950's, an increasing number of Constitutional initiatives for balanced budgets came to be introduced regularly in Congress. Constitutional amendments were proposed first by Senators Bridges and Harry Byrd of Virginia, and later by Senator Strom Thurmond of South Carolina and Carl Curtis of Nebraska, to require the submission by the President of an annual balanced budget and to prevent Congress from adjourning without having enacted such a budget. Another amendment, introduced by Senators Byrd and Bridges during this period, would have required Congress to earmark $500 million annually for debt reduction activities, in effect mandating an annual $500 million budget surplus. No action was taken on any of these measures, although one hearing was held in 1956 by the Senate Judiciary Committee (June 14, 1956 on S.J. Res. 126 and S.J. Res. 133, 83d Congress).

Since the outset of the 84th Congress in 1955, an average of four amendments to the Constitution to require a balanced Federal budget have been proposed during each Congress. In addition, numerous statutory proposals to achieve this end have been introduced and considered during this period. The Revenue Act of 1964 (P.L. 88-272), for example, stated:

> To further the objective of balanced budgets in the near future, Congress by this action recognizes the importance of taking all reasonable means to restrain government spending—Section 1.

The Budget and Impoundment Control Act of 1974 (P.L. 93-344) enacted major reforms in the Congressional budget process designed to enable Congress to consider individual spending measures in light of overall budget objectives.

In the Humphrey-Hawkins Full Employment Act (P.L. 95-523), a balanced budget was declared to be a national public policy priority. Section 2(a); 6(i).

An amendment offered by Senator Sam Nunn of Georgia to a 1978 tax reduction measure to make such reductions contingent upon a balanced budget by 1982 was rejected during conference, although it has been adopted in varying forms by both the full Senate and House. Later during that Congress, however, Rep. (now Senator) Charles Grassley of Iowa and Senator Harry Byrd, Jr. combined to enact into law an amendment to an IMF loan program authorization measure requiring that, beginning with fiscal year 1981, total budget outlays of the Federal government "shall not" exceed its receipts (P.L. 96-389, Section 3). Again, in 1979, a provison in a measure to increase the public debt limit stated that "Congress shall balance the Federal budget" (P.L. 96-5, Section 5). Under this legislation, the Congressional Budget Committees were required to propose balanced budgets for fiscal year 1981 and subsequent years.

In addition to concerns about balanced Federal budgets, many Members of Congress have been equally concerned about the relative size of public sector spending over the years. Reflecting this concern, legislation linking Federal spending to the gross national product, was introduced shortly after the Second World War. In 1952, Senators Robert Taft of Ohio and Homer Ferguson of Michigan introduced a proposed constitutional amendment to prohibit

the authorization of expenditures for non-military purposes in excess of 5 percent of the estimated national income for any fiscal year (S.J. Res. 155, 82d Congress). During the subsequent Congress, Rep. Ralph Gwinn of New York offered a measure to limit public expenditures to one-seventh of the national personal income (H.J. Res. 326, 83d Congress), while Rep. Richard Poff of Virginia offered an amendment to prohibit appropriations in excess of twenty percent of the preceding year's national income (H.J. Res. 217, 83d Congress).

During this period, as well, a sustained effort was made to call an Article V constitutional convention for the purposes of limiting the Federal taxing power. Initiated during the late 1930's in response to sharply increasing tax rates, seventeen States had submitted applications by the end of the Second World War. By 1963, there were 31 extant applications although many were, by that time, stale or had been rescinded by subequent State legislative sessions.

While few constitutional amendments were introduced to limit Federal spending during the 1960s, new constitutional initiatives emerged with the next decade. In 1973, an amendment offered by Rep. Jack Kemp sought to limit Federal expenditures and receipts to a percentage of the previous year's National Income (H.J. Res. 8716, 93rd Congress), while an amendment proposed six years later by Reps. Barber Conable and Ed Jenkins and Senators John Heinz and Richard Stone (and later by Senator Sam Nunn) sought to limit the growth of Federal outlays to the growth of the Gross National Product (H.J. Res. 395, S.J. Res. 56, 96th Congress). This latter amendment drew upon a draft prepared by the National Tax Limitation Committee. The Humphrey-Hawkins Full Employment Act (P.L. 95–523) established as a national target the reduction of Federal outlays to "the lowest ratio of outlays to GNP consistent with national needs and priorities." Section 2(j). This language replaced that proposed earlier by a Senate Committee to set this level at twenty-one percent of the GNP by 1981 and twenty percent by 1983.

VII. HISTORY OF BALANCED BUDGET CONCEPT

No concept is more a part of traditional American fiscal policy than that of a balanced budget. Throughout most of the nation's history, the requirement of budget balancing under normal economic circumstances was considered part of our "unwritten constitution". As University of Virginia Professor William Breit has observed:

> The balanced-budget rule which served as part of the Constitution was, or course, not in the form of a written statement that every expenditure had to be balanced by a tax. But it nevertheless had constitutional status. For expenditures in excess of receipts were considered to be in violation of moral principles. The imperative of the balanced budget was an extra-legal rule or custom that grew up around the formal document. It existed outside the precise letter of the Constitution on all fours with the system of political parties, the presidential cabinet, the actual op-

eration of the electoral college system, and the doctrine of judicial review, *Buchanan & Wagner, Fiscal Responsibility in Constitutional Democracy 10 (1978).*

The balanced-budget rule was an effective constitutional constraint in the sense of being part of a set of fixed principles antecedent to and controlling the day to day decisions of the national legislature.

18th and 19th Centuries

Influenced by individuals such as Adam Smith, David Hume, and David Ricardo, the drafters of the Constitution and their immediate successors at the helm of the new government strongly feared the effects of public debt. As Thomas Jefferson stated [the quotations in this section are taken from Kimmel, Lewis, *Federal Budget and Fiscal Policy: 1789–1958*]:

> The public debt is the greatest of dangers to be feared by a republican government.

Alexander Hamilton, who perhaps more than any other individual, influenced the course of American economic policy during our nation's first century, noted:

> As the vicissitudes of nations begat a perpetual tendency to the accumulation of debt, there ought to be a perpetual, anxious, and unceasing effort to reduce that which at any time exists, as fast as shall be practicable, consistent with integrity and good faith.

Earlier, in the Federalist #30, Hamilton had recognized the unhealthy propensity for public debt on the part of most governments when he wrote:

> I believe that it may be regarded as a position warranted by the history of mankind that, in the usual progress of things, the necessities of a nation, in every stage of its existence, will be found at least equal to its resources.

Both Hamilton and Jefferson were in agreement that, whatever debt happened to be accrued by a nation, it ought to be repaid within some prescribed period of time. In Jefferson's view, the profligacy of one generation ought not to forever burden its successors.

Early American Presidents were in virtually unanimous agreement on the dangers of excessive public debt. In his Inaugural Address, President John Adams stated:

> The consequences arising from the continual accumulation of public debts in other countries ought to admonish us to be careful to prevent their growth in our own.

President James Madison stated that one of the primary goals of his Administration would be:

> To liberate the public resources by an honorable discharge of public debts.

President James Monroe held a similar position observing that:

> After the elimination of the public debt, the Government would be left at liberty . . . to apply such portions of the

> revenue as may not be necessary for current expenses to such other objects as may be most conducive to the public security and welfare.

President John Quincy Adams also found a balanced budget to be a sound maxim of political economy:

> Stewards of the public money should never suffer without urgent necessity to be transcended the maxim of keeping the expenditures of the year within the limits of its receipts.

Among the most uncompromising advocates of budget balance was President Andrew Jackson, who viewed public debt in uniquely populistic terms:

> Once the budget is balanced and the debts paid off, our population will be relieved from a considerable portion of its present burdens and will find not only new motives to patriotic affection, but additional means for the display of individual enterprise.

Prior to the Civil War, customs duties ordinarily were more than adequate to cover the limited expenditures of the national government. During these years, deficits were rare. The majority of budget deficits that did occur were attributed to foreign conflicts—the War of 1812 and the Mexican War of 1846—and to several brief recessions in the late 1830's and the late 1850's. Whatever occasional deficits occurred, efforts normally would follow to repay them as expeditiously as possible.

Despite the enormous debts accumulated by the national government as a result of the Civil War, the period following it through the end of the century brought little change with respect to the balanced budget philosophy. A run of 28 years of consecutive budget surpluses occurred during this period. The norm of an annual balanced budget continued to exert considerable influence on the exercise of public policy. Any significant departures from balance or from efforts to repay existing public debt were treated as sources of alarm.

President Andrew Johnson, in proposing to effect substantial reductions in the war debt, observed:

> We should look at the national debt, as just as it is, not as a national blessing but as a heavy burden on the industry of the country to be discharged without unnecessary delay.

President William McKinley took the position that, even during unsatisfactory economic conditions, "the government should not be permitted to run behind its debt." President Benjamin Harrison described unnecessary public debt as "criminal".

The principal arguments raised throughout most of the nineteenth century to public debt were as follows: first, interest on the debt was a heavy burden upon the working classes; second, interest payments represented a redistribution of income in favor of the well-to-do-classes; and finally, the capital freed from unproductive employment through debt reduction invariably would find its way

into more productive and enterprising uses. As Samuel Inghams, Secretary of the Treasury under Andrew Jackson, noted:

> Interest is now paid to capitalists out of the profits of labor; not only will this labor be released from the burden, but the capital, thus thrown out of an unproductive use, will seek a productive employment; giving thereby a new impetus to enterprise in agriculture, the arts, commerce, and navigation.

20th Century

The strong national consensus favoring a balanced national budget continued through the early decades of the 20th century. President Wilson argued in behalf of balanced peacetime budgets in observing:

> Money being spent without new taxation and appropriation without accompanying taxation is as bad as taxation without representation.

It was President Calvin Coolidge's goal to run actual surpluses in order to repay the large national debt (for that time) of $24 billion that had resulted from the First World War. He stated as his Administration's primary fiscal objective—maintaining revenues at a level "not too greatly in excess of expenditures." He stated further:

> The nation must make financial sacrifices accompanied by a stern self denial in public expenditures until we have conquered the disabilities of our public finance . . . we must keep our budget balanced for each year.

The surpluses of the 1920's, however, were followed by an unbroken string of ten peace-time deficits during the 1930's and then six war-related deficits. This sustained period of deficit spending represented something entirely unprecedented in United States history, although the Nation had suffered a prolonged series of deficits in relation to the Civil War. New economic theories that placed great weight upon the ability of the Federal government to "manage" fiscal policy through deficits and surpluses emerged during this period.

The new theories found a fertile climate in part as a result of the Great Depression that had overcome the economy in the late 1920's and early 1930's. While there are many economic explanations for the Great Depression, it is extremely difficult to understand the argument of a small minority of individuals that the commitment of the Hoover Administration to a balanced budget was in any way responsible. It is an argument that even most proponents of the "new economics" have rejected. Apart from this argument's failure to explain why the commitment of earlier administrations to balanced budgets failed to trigger similar economic collapses, it is an argument that is inconsistent with the facts of Hoover Administration policies. Despite the fact that there was at that time a substantial bipartisan consensus in favor of the need to balance the Federal government's budget, such budgets were not produced. In the words of Lewis H. Kimmel in his historical analysis of Federal budget and fiscal policy, "The fight for a balanced budget had been made, but the battle was never won."

This is not to say that budget deficits were responsible for the Depression either. The Federal budget was probably not a major factor—one way or another—in causing the Depression. First, there was the far smaller scale of the Federal budget at that time. In the year 1929, the gross national product of the United States was approximately $100 billion. Federal expenditures for FY 1929 represented approximately 3 percent of the GNP and the surplus for that fiscal year of $734 million represented approximately three-quarters of one percent of the GNP. Thus even from the most determined Keynesian perspective, it is difficult to argue that the Federal government was engaged in any significant removal of purchasing power from the private sector. The fiscal posture was one of moderate restraint at best. Second, the Federal budget is absolved of responsibility because the movement of the budget from nominal surplus to substantial deficit—the consequence of a rapid decline in the level of receipts—was such as to mitigate rather than aggravate the severity of the downturn, from the Keynesian perspective. Later efforts to increase spending on emergency relief programs acted in precisely the same fiscal direction. Finally, the national downturn during this period was accompanied by a monetary deflation of unprecedented severity, one that took an extremely long period of time to reverse.

While there are various theories of the cause for the Depression—Milton Friedman's analysis of trends in the supply of money during this period (*A Monetary History of the United States: 1867–1960*, 1960), Charles Kindleberger's observations on the absence of an international lender of last resort (*The World in Depression*, 1973), Jude Wanniski's account of the Smoot-Hawley tariff (*The Way the World Works*, 1980) and so forth—there is little basis for attributing the Depression to the state of the Federal budget, much less to the idea that this budget normally should be in balance.

The Federal budget for FY 1931 was the first budget to be prepared following the crash of the stock market in late 1929. It was submitted by President Hoover about six weeks after the collapse of the market. In this budget, surpluses were estimated for FY 1931 and 1932, of $758 million and $499 million respectively. These estimations remained in effect even after a reduction in personal and corporate income taxes was enacted into law in December of 1929, carrying with it an expected, immediate revenue loss of $80 million for each of these two years. It was not until April of 1930 that President Hoover conceded that, not only would the predicted surpluses not accrue, but that deficits could be expected for FY 1931 of $20 to $30 million. The final deficit for FY 1931 was $462 million or approximately fifteen percent of the total level of public expenditures. The final deficit for the succeeding fiscal year was an overwhelming $2.7 billion or approximately sixty percent of the total level of public expenditures. Annual deficits of a similar magnitude recurred during the remainder of the decade as first one then a second depression took place. The depression that struck the country in the late 1930's—nearly as powerful as that in the early 1930's—finally was overcome only by this country's entry into the Second World War.

While the Hoover Administration never retreated from its traditionalist attitude toward the balanced budget, the trend in expendi-

tures during its tenure was upward, primarily because of greater outlays for public works and the Reconstruction Finance Corporation. Total Federal expenditures had increased by nearly $2 billion between FY 1927 and FY 1932, an increase of approximately 64 percent. Growing levels of public spending became a major issue in the 1932 Presidential campaign as Franklin Roosevelt criticized the incumbent Administration for failing to achieve the "one sound foundation of permanent economic recovery"—a "complete and honest balancing of the federal budget". Only six days after his inauguration, President Roosevelt summarized his views concerning the growing level of budget deficit:

> With the utmost seriousness, I point out to Congress the profound effect of this fact upon our national economy. It has contributed to the recent collapse of our banking structure. It has accentuated the stagnation of the economic life of our people. It has added to the ranks of the unemployed. Our Government's house is not in order and for many reasons no effective action has been taken to restore it to order.

The Economy Act of 1933 (48 Stat. 8) was enacted at this time, providing for spending reductions of approximately $500 million, in an effort to reduce the alarming growth of the public debt. During much of its first term in office, despite mounting public deficits, the Roosevelt Administration continued to express its support for the achievement of a balanced budget. It was not until such deficits has persisted for several years that the Administration attempted publicly to explain its fiscal policies in terms of the "new economics" and in terms of the need for the Federal government to engage in the kind of demand management or "pump priming" required by this school of economic theory. For much of his first term, President Roosevelt argued that it was the "deficit of today" that was making possible the "surplus of tomorrow". The proposed budget for FY 1937 was reported by the Administration as being in balance, "except for recovery and relief".

World War II had an indelible impact upon Federal government fiscal policies. During the war years, Federal expenditures rose from $9 billion to almost $100 billion, with the total national debt standing at about $250 billion when the fighting ended. The total public debt of the United States stood at a figure approximately six times as large as the debt existing before the War and approximately ten times that of the total debt following the first World War.

Following World War II, although the annual balanced budget was no longer the sole standard by which fiscal policy was judged, there was continued expression of support for the idea of balanced budgets, particularly during times of economic expansion. Even the "new economics" required the achievement of surpluses during these periods in order to overcome the deficits incurred during economic downturns. President Truman observed in his budget message for 1948 that:

> As long as business, employment and national income continue high, we should maintain tax revenues at levels

> that will not only meet current expenditures but also leave a surplus for retirement of the public debt.

The idea of budget deficits as a regular instrument of fiscal policy, however, was increasingly evident during this period, although the Truman Administration managed to balance half of its budgets while incurring total deficits that exceeded total surpluses by only a small amount.

President Eisenhower continued along much the same lines, although he expressed far more public support for the concept of a regularly balanced budget than did his predecessor. He observed in his 1957 budget message:

> We strengthen our financial position by a balanced budget. We must make sure that we do not undermine our financial strength by laying the groundwork for future budget deficits.

It was not until the recession of 1957–58 that the Eisenhower Administration proved incapable of compensating for deficits with subsequent surpluses. The $12.9 billion budget deficit in 1958 was (at the time) the largest peace-time deficit in the history of the nation.

The real turning point in the history of U.S. fiscal policies occurred during the 1960's. Even the Keynesian objective of balancing surplus years with deficit years succumbed to the idea of regular, annual, uncompensated deficits.

During the past two decades, the Federal government has run deficits in all but a single year. The deficits have come during good times and they have come during bad times. They have come from Presidents who have pledged themselves to balanced budgets as well as from Presidents whose fiscal priorities were elsewhere. They have come from Presidents of both parties.

Even more alarmingly, the magnitude of these deficits has increased enormously during this period. For the 7 fiscal years ending in fiscal year 1967, the total deficit was approximately $35 billion. For the next 7 fiscal years ending in fiscal year 1974, the total deficit was approximately $91 billion. For the next 7 fiscal years, ending in fiscal year 1981, the total deficit was approximately $450 billion. The estimated deficit for fiscal years 1982–6 will be approximately $920 billion. The total national debt today stands at approximately $2 trillion, with nearly half of that total incurred during the past 8 year alone.

Whatever lip service may have been given to the concept of a balanced budget during the past two decades, it is clear that there either is the lack of will to conform with this ideal, or that fundamental obstacles to its achievement exist within the political system.

It is possible then to summarize the history of the Federal budgetary record into several distinct periods of varying lengths. Over the longest of these periods—from 1789 to 1932—balanced budgets or surplus budgets were the norm. While budget procedures had little of their present organization, the concept of a balanced budget was accepted widely as the hallmark of fiscal responsibility. Those deficits that did occur—during wartime or during the most

severe recessions—normally were compensated for by subsequent surpluses. During the second period—from 1932 to 1960—the rigid rule of annual balanced budgets gave way to a fiscal policy in which balanced budgets remained an overall objective but in which deficit spending nevertheless was viewed as a tool occasionally useful to effect appropriate economic results. Finally, the most recent period—1960 to date—has seen unrelieved instances of deficit spending and increasingly high levels of deficit spending. The balanced budget concept, a concept which had exercised a decisively restraining influence during the first period, and a diminished though still restraining influence during the second period, had dwindled into almost total irrelevance by the end of this latter period. Not coincidentially, in the view of this Committee, the end of this period saw the United States still engaged in some of the prolonged and most intractable economic difficulties in its history.

VIII. SENATE JOINT RESOLUTION 13 AND THE CONSTITUTION

In developing Senate Joint Resolution 13, the committee has been concerned not only with developing an amendment reflecting sound economic policy but one reflecting sound constitutional policy as well. The committee fully appreciates the differing imperatives in putting together a constitutional provision, as opposed to a simple statutory provision.

Spending bias

The purpose of the proposed amendment is not to write into the Constitution any permanent economic policy; rather, as is more fully discussed in section III it is to eliminate a pronounced structural bias toward increased levels of spending that has developed within the political system. The existence of this bias has led to a fiscal process in this country that is unresponsive and largely undemocratic. It is unresponsive in that levels of public spending inexorably move upward whatever the genuine desires of the people; it is undemocratic in that it serves to obscure where responsibility lies for such increased spending.

Throughout most of the history of this country, public spending was constrained by an "unwritten Constitution" requirement of a balanced budget. While occasional deficits would be incurred, generally during wartime, public debt was regarded as something undersirable, something to be reduced and eliminated as quickly as possible.

A linkage existed between spending and revenue in the sense that public expenditures generally were set at levels that were matched by public revenues. Revenue estimates generally were established prior to expenditure estimates and served to define permissible levels of expenditures. It was an historical norm, described by Professor Alvin Rabushka of the Hoover Institution, as one in which:

> Public officials first determined what resources were available to Government and against that constraint chose among the many competing claims on public spending.

Under this system, public officials could support new spending programs but only when they also were prepared to reduce other spending programs commensurately or to raise revenues to cover such new spending. This political reality served as an effective check upon the creation of unlimited numbers of new spending initiatives.

As new economic theories began to take hold in the middle years of the twentieth century and as the traditional balanced budget requirement came increasingly to be disregarded, an entirely new fiscal environment evolved. With the severing of the historical linkage between spending and revenue, spending decisions increasingly have become divorced from revenue decisions. Spending decisions increasingly have been reached without consideration of whether or not revenues existed to finance such spending. The virtually unlimited accessibility to deficit spending has served to bridge whatever gaps have developed between levels of expenditures and levels of revenues.

As Professor Craig Stubblebine of Claremont College has noted:

> Planned deficits in years good and bad signify Congressional rejection of the fiscal rule which served America for the greater part of its life . . . with erosion of these fiscal disciplines, understood by and adhered to by the founders of this nation, no one should be surprised that the Congress has been unable to exercise the restraint necessary to secure and maintain economic stability.

The implications of this access to deficit spending as a substitute for the traditional balanced budget norm are important for our political system. It means that Members of Congress invariably have political incentives to respond to the demands of spending interest groups for greater public spending. Such spending, unlike in past years, need not be accompanied by votes to reduce spending in other areas or by votes to increase public revenues. In other words, the political advantages to be accrued by responding favorably to a spending interest no longer are accompanied by equivalent political disadvantages growing out of the need to antagonize some other spending interest or to antagonize the taxpaying public generally.

Dr. William Niskanen, a member of the President's Council of Economic Advisors, has remarked in this regard:

> Once the nexus between Federal spending and tax revenues was broken, no consensus developed on any other rule to constrain the level of spending and the deficit.

Professor Buchanan has remarked further:

> The simple arithmetic of politics suggests a regime of permanent and continuing deficits in democratic society where there exists no constraint that dictates some balancing of the costs and the benefits of spending programs. "To spend without taxing"—this stuff of politian's dreams must somehow be held in check by rules of fiscal prudence.

The result is a strong and persistent bias in behalf of ever higher levels of public spending. Members of Congress are not required to vote for higher taxes in order to finance higher spending. However

well-intentioned, and however committed a Member of Congress is to fiscally responsible policies, it is politically difficult to cast votes against spending measures. It is the legislative process itself that is flawed in this respect. The tax-spending interests are intense and articulate in support of their programs—for they normally stand to gain considerable amounts of public funds on a per capita basis—while the tax-paying interests are diffuse and unorganized—for they stand to lose only nominal sums in the context of any single spending program. Such an unequal competition for tax dollars, not surprisingly, results in defeat more often than not for the tax-paying interests.

Recognition of the difficulties posed for the body politic by special interest groups stems at least as far back as Madison's discourses in the Federalist Papers. In the Federalist No. 10, Madison emphasized the paramount responsibility of the new Government to "break and control the violence of faction." Later in the same essay, he proceeded to define such "factions" as a:

> majority or minority of the whole, who are united and actuated by some common impulse or passion, or of interest adverse to the rights of other citizens, or to the permanent and aggregate interests of the whole.

The causes of such "factions" are "sown in the nature of man" and must be controlled by the institutions created by the new Constitution.

While not necessarily anticipating the precise harm that would be done to the "interests of the whole" by "factions" in the area of national economic policy, Madison did discourse upon the need for the institutions of the new Government to temper the influence of factions, not to compound it. "Ambition must be made to counteract ambition," Madison observed in the Federalist No. 51.

It is the view of this Committee that the present fiscal regime magnifies the role of factions within the political process and enhances the divisions between these factions and the interests of the whole; the fiscal regime established by the proposed amendment, on the other hand, would refocus the efforts of factions in a way that strengthens and reinforces the political system rather than such factions competing with the taxpayers, or the "interests of the whole", in order to increase generally the resources available to the public sector. Instead, they would be competing with one *another*, in order to secure for themselves a higher share of a fixed level of resource available to the public sector. Instead of demonstrating merely that their program was a worthy one, each such faction would have to demonstrate further than their program deserved priority.

Representativeness of process

The objective of Senate Joint Resolution 13 then is not to "read economic policy into the Constitution", as some have suggested, but to alter the spending bias in order to make the budget process one that is more responsive and more democratic. It dooes not seek to establish an alternative bias in behalf of reduced levels of expenditures, but simply to restore a semblance of neutrality. As Professor Antonin Scalia (now U.S. Circuit Court judge) has observed:

> while the extraordinary legislative requirements [of the proposed amendment] pertain to economic measures, they are motivated by political science and governmental theory rather than economics, and their intended effects is to eliminate rather than produce an economic bias or presumption

Passage of this amendment would ensure that the political equation confronting Members of Congress who must vote on spending measures carries some element of countervailing political advantage and disadvantage.

An analysis by the Heritage Foundation on Senate Joint Resolution 13 has concluded:

> Amending the Constitution to require that Congress always "balance" its fiscal decisions would be adding a political rather than an economic principle to the Constitution. A balanced budget implies neither a raising nor a lowering of either taxes or spending. It implies no decision about how much of the private wealth of the country the Congress may expropriate for governmental purposes. It contains no limitation of Congress' power to spend for the general welfare. It is based on no economic formulas. It merely proposes a unity; that appropriations be made to measure taxes and that taxes be made to measure appropriations, *Issue Bulletin No. 59, March 6, 1980.*

It is the premise of Senate Joint Resolution 13 that the representative political processes ought to be charged with primary responsibility for making day-to-day decisions with respect to spending and taxing. It is the further premise that elected representatives can be expected to make spending and taxing decisions more reflective of true public sentiment once the bias toward spending is overcome. Unlike many other proposed constitutional amendments on this subject, Senate Joint Resolution 13 minimizes constitutional intrusion into these day-to-day decisions. There is nothing in the proposed amendment that would prevent Congress from approving any particular item of expenditure or taxation. There is nothing in the proposed amendment that would establish any permanent level of expenditure or taxation in the Constitution. And there is nothing that would make it significantly more difficult to increase expenditures or taxation than to reduce expenditures or taxation.

What the proposed amendment would do is modify the elements within the present political system that enable Members of Congress to spend public funds without having to account for this spending. There is nothing in Senate Joint Resolution 13 that would preclude Congress from continuing to increase public spending; all that would be required is that the costs of such spending no longer be obscured or deferred beyond public recognition. Unlike some proposed constitutional amendments that would make it difficult for Congress to respond to even genuine public sentiment for increased levels of spending or taxing, Senate Joint Resolution 13 would not pose an insuperable obstacle to this end. Concomitantly, however, it would ensure that no insuperable obstacles existed to reduced levels of spending or taxing, as now is the case.

As Professors Buchanan and Wagner have observed:

> We must restore some rule that will restrict politicians in their natural, understandable proclivity to spend and to refrain from taxing . . . budgets will tend toward chronic deficits until and unless politicians are constrained by some constitutional rule which requires that the taxing and spending sides of the fiscal account be balanced.

Senate Joint Resolution 13 would democratize the budget process by making it a more honest and open process. Congress, as already noted, would remain fully capable of increasing public spending or taxing, but only in the event that it was equally willing to cast the "difficult" votes necessary to accomplish this. Section 1 would mandate that increased public spending for a program be matched either by votes to reduce spending for some other program, or by votes for increased taxes. Section 2 would preclude increased revenues from becoming available through automatic tax increases. Members of Congress would have to go on record either in support of cutting some spending program, or of raising taxes generally, before it could effect higher public spending. Tax increases would have to be voted explicitly, rather than implicitly imposed through deficit spending and inflation. As Professor Friedman has stated:

> deficits are bad . . . They are bad because they encourage political irresponsibility. They enable our representatives in Washington to buy votes at our expense without having to vote explicitly for taxes to finance the largesse.

Professor Robert Crawford of Brigham Young University has observed that the proposed amendment:

> Would increase the flow of economic information into the political marketplace.

Rather than having to analyze hundreds of rollcall votes annually in order to assess the performance of their Representatives and Senators, members of the public (and their intermediaries) would have to analyze a mere handful of key votes in order to determine which legislators were responsible for increased levels of public expenditure, taxation, and debt. If the citzenry genuinely were desirous of increases, no doubt this would be reflected by their ballots; if, however, as many Members of this Committee suspect is presently the case, the citizenry was not so desirous, this too would be reflected by their ballots.

In summary, the key provisions in Senate Joint Resolution 13—the balanced budget norm in Section 1 and the abolition of automatic tax increases in Section 2—are necessary elements of any measure to promote a more neutral budget process; they are not necessarily ends in themselves. So long as unlimited deficit spending and automatic tax increases remain available to Members of Congress, and so long as Congress does not have to vote higher taxes if it wants higher spending, the budget process will continue to be skewed sharply in behalf of higher levels of spending and only minimally responsive to the will of the electorate in this regard.

Perhaps most importantly, so long as these elements remain in place, the budget process will continue to be a dishonest one, with members of Congress perpetually able to avoid accountability for their spending and taxing decisions, perpetually able to escape public identification for their policies, and perpetually able to reap the immediate political benefits of their actions while postponing indefinitely the political costs.

Economic policy and Constitution

While it is the view of the Committee that Senate Joint Resolution 13 primarily proposes an amendment of process, and that it reads into the Constitution a political principle of enduring value rather than a transient economic policy, it is still worth addressing the objections of those who find difficulty with the concept of placing a balanced budget provision or taxing limitation in the constitution. Professor Lawrence Trible of the Harvard Law School, for examples, states:

> The Constitution embodies fundamental law and should not be made the instrument of specific social or economic policies . . . to endure as a source of unity rather than division, the constitution must embody only our most fundamental and lasting values . . . but unlike the ideals embodied in the Constitution, fiscal austerity—however sound as a current goal—speaks neither to the structure of government nor to the rights of the people . . . it should be amended only to modify fundamental law—not to accomplish policy goals.

It is first worth noting that, with a single exception (maintenance of equal State representation in the Senate), there is no extant limitation upon the subject matter of Constitutional amendments. Although efforts were made at the Constitutional Convention to place substantive limitations in the Article V amending clause, they were largely unsuccessful. Periodic amendments during the 19th century to place substantive limitations upon the amending authority were also unsuccessful. Later challenges to both the 18th and 19th Amendments on the grounds of "unconstitutionality" failed as well. *National Prohibition Cases* 253, U.S. 350 (1920); *Leser* v. *Garnett* 258, U.S. 130 (1922).

While there is no formal limitation in the Constitution regarding the subject matter of amendment, it may be fair nevertheless to suggest that: (1) a proposed amendment may be inconsistent with the purpose and spirit of that document; (2) the object of the proposed amendment is an inappropriate object to be addressed by the Constitution; or (3) the form or structure of the amendment is inconsistent with the Constitution.

As discussed above, what Senate Joint Resolution 13 seeks to achieve is the elimination of a structural bias within our political system that has arisen through the confluence of growing interest group power and the abolition of the historical balanced budget constraint upon national fiscal policy. It does *not* mandate particular economic policy outcomes; it attempts simply to effect a more neutral environment within which budget decisionmaking can occur—an environment in which the self-interest of factions does not necessarily produce policy results at variance with the "interests of the whole."

Beyond that fact, however, it must be stated that the growth in the Federal Government in recent decades—a growth that never could have been anticipated by our Founding Fathers—*does* have implications for the freedom and well-being of the citizenry. The rights of the people are threatened every bit as much by debasement of the currency through inflation and by expropriation of the fruits of their labor through taxes as they are by the existence of poll taxes or the inability of eighteen year olds to vote. As John Maynard Keynes has observed:

> There is no subtler, no surer, means of overturning the existing basis of society than to debauch the currency. The process engages all of the hidden forces of economic law on the side of destruction and does it in a manner in which not one man in a million is able to diagnose. *Economic Consequences of the Peace (1920).*

Laurence Silberman, former United States ambassador and a Fellow at the American Enterprise Institute, has stated further:

> The abuses feared in the 18th century and which our Constitution was designed to prevent are of a different order than the new inflation causing abuses of the 20th century. But the latter are no less dangerous to the functioning of American democracy or no less threatening to the stability of our political and social order.

In short, national solvency, the ability to pay one's debts, is a fundamental value of any nation.

The concept of "limited government" or "enumerated powers" that was at the root of the Constitution and that served to check the growth of the public sector during most of the history of our country has been altered drastically by the evolution of public policy and constitutional interpretation during the 20th century in a manner that never could have been predicted by the drafters of the Constitution.

These include the continued expansion of the notion of what constitutes "commerce . . . among the several States"; the development of new theories of Congressional authority under the 14th Amendment; the acceptance of the Hamiltonian conception of the breadth of the general welfare clause; the adoption of the 16th Amendment allowing the imposition of income taxes; and the erosion of the traditional norm of a balanced Federal budget. In place of a spending power limited to the "enumerated" powers of Article I of the Constitution, the Courts have transformed this section into one investing Congress with broad and virtually unlimited spending authority. Professor Milton Friedman has stated:

> Such limits on total government spending were provided at an earlier date by the gold standard, an unwritten constitutional prohibition on deficit budgets, and Supreme Court interpretation of "inter-State commerce", "due process" and similar terms in the Constitution in such a way as narrowly to limit Federal action in the economic area. These limits have now been swept away. They cannot be restored in their initial form. But some replacement is desperately needed.

Professor Breit stated further that:

> The balanced budget norm was so deeply ingrained during this time as to form a constraint of considerable power on the actions of government . . . the unwritten constitution maxim of the balanced budget . . . had the result of chaining Leviathan. Buchanan & Wagner, *Fiscal Responsibility in Constitutional Democracy* 17 (1978).

The new economics (as well as the new jurisprudence) has thus had the impact of removing these formal and informal limitations upon the growth of the Federal public sector—a sector that today consumes approximately one-fourth of the Gross National Product, up from approximately 3 percent in 1930, 10 percent in 1940, 14 percent in 1950, 18 percent in 1960, and 20 percent in 1970.

Not only has the public sector grown relative to the economy generally, but it has increasingly grown through public expenditures that are not financed by tax revenues—deficit spending. But it is not simply the economic health that is being threatened: it is the political health as well. As Professor (now U.S. Circuit Court judge) Robert Bork has observed:

> The long-term growth of government's share of national wealth is a serious near-term threat to the vitality of the economy . . . less obviously perhaps rising government spending is a long-term threat to American political freedom. Social and political discontents may increase beyond tolerable levels as the decreased size of the pie intensifies disputes about its division. Inflation, which may become endemic if spending is not controlled, has destroyed democracies before. Increasing subsidies with conditions attached are a mode of coercion that may evade constitutional guarantees allowing government to buy decreased freedom it could not order directly. Rising spending also fosters the growth of great bureaucracies whose choices increasingly displace those of elected representatives. Even if the rule of the bureaucracies proves both stable and benevolent, which is by no means to be assumed, it is not the sovereignty of the people. *Wall Street Journal*, April 4, 1979.

He goes on to conclude:

> Any systematic malfunction of government serious enough to threaten prosperity and freedom may properly be addressed by the Constitution.

The founding fathers, Professor Bork adds, had they not taken the concept of a limited central government for granted, would have incorporated a balanced budget provision and spending limitation provision into the original Constitution. It is the fact of an increasingly unconstrained central government—perhaps the critical fact of contemporary United States society—that is the basis for Senate Joint Resolution 13, which would be one of the few constitutional amendments to limit Congress, rather than the States, in any significant regard.

The Constitution as originally written, contained numerous economic doctrines and policies. As Professor Kenneth Van Dam has noted:

> When one contemplates the Constitution as a whole, considering provisions not specifically directed to fiscal matters and taking into account the federal structure created by the Constitution, an imposing edifice of fiscal powers and limitations can be perceived. The result is what I call the "fiscal Constitution." 44 *University of Chicago Law Review* 271, 272.

Professor Van Dam goes on to argue:

> One of the principal fiscal objectives of the Constitution was to ensure that state tax and tariff policies did not impede the creation of a free trade among the state or permit some states to profit at the expense of others. Id. 274.

Professor Aaron Wildavsky of the University of California notes further:

> Dissatisfaction with monetary and debt policy under the articles of confederation spurred the devising of an entirely new document. The commerce clause, designed to prevent balkanization of trade by states, the prevention of duties on exports, the restricted issuance of money to the Federal Government and numerous other provisions are centrally concerned with economic policy. *How to Limit Government Spending* 74 (1980).

The 16th amendment to the Constitution, authorizing Congress to "lay and collect taxes on incomes", has also had incalculable impact upon the budget process of the Nation. This amendment overcame the Article I, section 9 prohibition upon the Federal taxing authority extending to un-apportioned, direct Federal taxation, see *Pollock v. Farmers Loan & Trust Co.*, 157, U.S. 429 (1895).

In short, the Committee believes that Senate Joint Resolution 5 fully meets the prerequisites of a sound constitutional amendment as opposed to a sound statutory measure. The subject matter—the spending bias within our political process—is of fundamental and lasting importance to the health of our economy and our polity. The particular approach adopted by the amendment—the creation of a budget environment that substantially reduces this bias—is consistent with the emphasis upon amendments of process within our Constitution. Finally, the language of the amendment is, as described by Professor Scalia:

> entirely in accord with a federal constitutional tradition that favors the expression of broad fundamental principles but leaves further specification and the elaboration of detail to later usage and experience.

The amendment does not read a particular economic theory into the Constitution; it does not read precise spending or taxing levels permanently into the Constitution; it does not preempt the day-to-day legislative decisions of the representative branch of the national government; and it is a sufficiently flexible provision to permit the government to respond to economic circumstances of a widely varying nature.

IX. ECONOMIC BACKGROUND

Two statements summarize the economic issues addressed by Senate Joint Resolution 13: (1) The Federal sector has become increasingly prone to deficit financing since World War II; and (2) The Federal sector, during that period, has come to command an increasing share of the nation's economic output and income.

Federal deficits: Increasingly frequent and large

The Federal government has run a budget deficit in twenty-four of the past twenty-five years and in forty-seven of the past fifty-five years. Deficit spending has come to occur during good economic conditions and during bad economic conditions. While the past decade has seen little change in the frequency of these deficits, it has seen, however, significant change in the size of deficits.

Since 1970, the United States has incurred the eleven largest peacetime deficits in the history of the Nation with nine deficits over the past decade in excess of $50 billion. Following fiscal year 1970, the total national debt of the Nation stood at $383 billion; following fiscal year 1985 just fifteen years later, this figure will stand at approximately $2 trillion ($2,000,000,000,000). Nearly half of this total debt has been incurred during the past eight years alone, with well over two-thirds having been incurred in the past two decades alone. (See table 2.)

TABLE 2.—NATIONAL DEBT IN THE 20TH CENTURY

[In billions of dollars]

Year	Debt	Year	Debt	Year	Debt
1900	1	1929	17	1958	280
1901	1	1930	16	1959	288
1902	1	1931	17	1960	291
1903	1	1932	19	1961	293
1904	1	1933	23	1962	303
1905	1	1934	27	1963	311
1906	1	1935	29	1964	317
1907	1	1936	34	1965	323
1908	1	1937	36	1966	329
1909	1	1938	37	1967	341
1910	1	1939	48	1968	370
1911	1	1940	51	1969	367
1912	1	1941	58	1970	383
1913	1	1942	79	1971	410
1914	1	1943	143	1972	437
1915	1	1944	204	1973	468
1916	1	1945	260	1974	486
1917	3	1946	271	1975	544
1918	12	1947	257	1976	632
1919	25	1948	252	1977	709
1920	24	1949	253	1978	780
1921	24	1950	257	1979	834
1922	23	1951	255	1980	914
1923	22	1952	259	1981	1,004
1924	21	1953	266	1982	1,147
1925	21	1954	271	1983	1,382
1926	20	1955	274	1984	1,577
1927	19	1956	273	1985[1]	1,850
1928	18	1957	272		

[1] Estimated in FY 86.

Source: Office of Management and Budget.

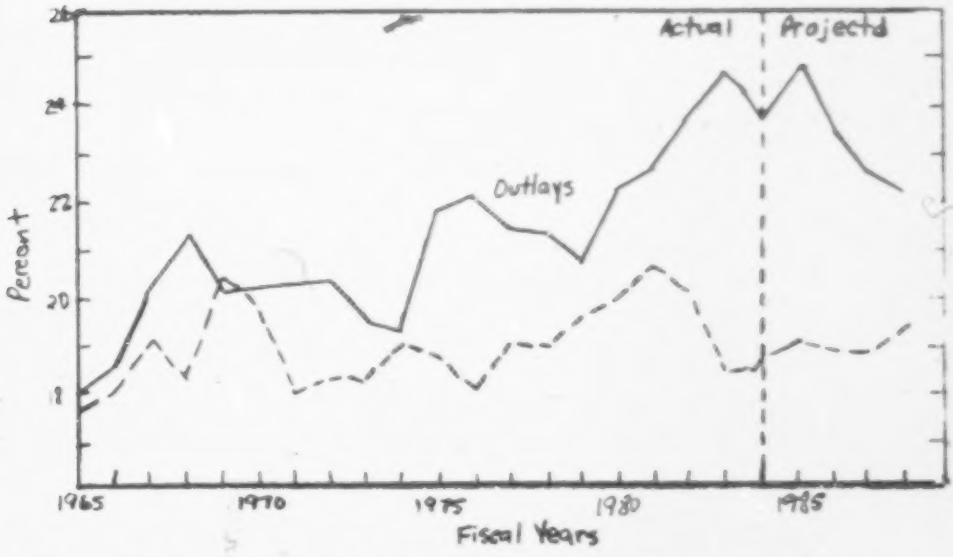
With the rising national debt has come rising interest payments. Where interest absorbed approximately six percent of the national budget twenty years ago, in FY 1985 interest payments will represent over thirteen percent of the total budget. Total interest of $130 billion for FY 1985 represents a total larger than the entire Federal budget during the early 1960's, and comprised the third largest expenditure item in the Federal budget. It is a figure nearly half as large as spending for national defense and nearly one-third as large as spending for income security programs, including Social Security.

Federal spending and taxing: An increasing share

Prior to World War I, Federal spending represented a minor share of the nation's economic output of goods and services. Other than in times of war, the relatively small amounts of Federal spending were financed primarily by import duties. Government spending at all levels represented less than 9 percent of the Gross National Product (GNP).

Beginning with ratification of the 16th Amendment in 1913, providing Federal access to taxation of incomes, and with the onset of World War I, the Federal sector has demonstrated a continuing propensity for growth, whatever the economic circumstances. Over the next twenty years, government spending nearly doubled as a percentage of the economy. Since that period, however, spending has accelerated at an even more rapid pace, particularly Federal government spending. In 1929, Federal expenditures of $3[illegible] billion represented just three percent of the total GNP. By 1[illegible]50, the peacetime share had risen to fifteen percent of GNP or $43 billion. For fiscal year 1984, Federal government spending of $852 billion commanded nearly 24 percent of GNP—the highest in the peacetime history of the United States (See table 3.)

TABLE 3.—FEDERAL REVENUES AND OUTLAYS AS PERCENTAGE OF GNP



Source: Baseline Budget Projections for Fiscal Years 1985–1989, CBO February 1984

To illustrate this growth in another way, the first $100 billion budget in the history of the nation occurred as recently as fiscal year 1962, more than 170 years after the founding of the Republic. The first $200 billion budget, however, followed nine years later in fiscal year 1971. The first $300 billion budget occurred four years later in fiscal year 1975; the first $400 billion budget two years later in fiscal year 1977; the first $500 billion budget in fiscal year 1980; the first $600 billion budget in fiscal year 1981; the first $700 billion budget in fiscal year 1982; and the first $800 billion budget in fiscal year 1984. (See table 4.)

TABLE 4.—BUDGET RECEIPTS AND OUTLAYS, 1789–1986 [1]

[In millions of dollars]

Fiscal year	Budget receipts	Budget outlays	Budget surplus or deficit (–)
1789–1849	1,160	1,090	+70
1850–1900	14,462	15,453	–991
1901–1905	2,797	2,678	+119
1906–1910	3,143	3,196	–52
1911–1915	3,517	3,568	–49
1916–1920	17,286	40,195	–22,909
1921	5,571	5,062	+509
1922	4,026	3,289	+736
1923	3,853	3,140	+713
1924	3,871	2,908	+963
1925	3,641	2,924	+717
1926	3,795	2,930	+865
1927	4,013	2,857	+1,155
1928	3,900	2,961	+939
1929	3,862	3,127	+734
1930	4,058	3,320	+738
1931	3,116	3,577	–462
1932	1,924	4,659	–2,735
1933	1,997	4,598	–2,602
1934	3,015	6,645	–3,630
1935	3,706	6,497	–2,791
1936	3,997	8,422	–4,425
1937	4,956	7,733	–2,777
1938	5,588	6,765	–1,177
1939	4,979	8,841	–3,862
1940	6,361	9,456	–3,095
1941	8,621	13,634	–5,013
1942	14,350	35,114	–20,764
1943	23,649	78,533	–54,884
1944	44,276	91,280	–47,004
1945	45,216	92,690	–47,474
1946	39,327	55,183	–15,856
1947	38,394	34,532	+3,862
1948	41,774	39,773	+12,001
1949	39,437	38,834	+603
1950	39,485	42,597	–3,112
1951	51,646	45,546	+6,100
1952	66,204	67,721	–1,517
1953	69,574	76,107	–6,533
1954	69,719	70,890	–1,170
1955	65,469	68,509	–3,041
1956	74,547	70,460	+4,087
1957	79,990	76,741	+3,249
1958	75,636	82,575	–2,939
1959	79,249	92,104	–12,855
1960	92,492	92,223	+269

TABLE 4.—BUDGET RECEIPTS AND OUTLAYS, 1789–1986 [1]—Continued

[In millions of dollars]

Fiscal year	Budget receipts	Budget outlays	Budget surplus or deficit (–)
1961	94,389	97,795	–3,406
1962	99,676	106,813	–7,137
1963	106,560	111,311	–4,751
1964	112,662	118,584	–5,922
1965	116,833	118,430	–1,596
1966	130,856	134,652	–3,796
1967	148,906	157,608	–8,702
1968	152,973	178,134	–25,161
1969	186,882	183,645	+3,236
1970	192,807	195,652	–2,845
1971	187,139	210,172	–23,033
1972	207,309	230,681	–23,373
1973	230,799	245,647	–14,849
1974	263,224	267,912	–4,688
1975	279,090	324,245	–45,154
1976	298,060	364,473	–66,413
TQ [2]	81,232	94,188	–12,956
1977	355,559	400,506	–44,948
1978	399,561	448,368	–48,807
1979	463,302	490,997	–27,694
1980	517,112	576,675	–59,563
1981	599,272	657,204	–57,932
1982	617,766	728,375	–110,609
1983	600,562	795,969	–195,407
1984	66,457	851,786	–185,324
1985 est	736,859	959,085	–222,226
1986 est	793,729	973,725	–179,996

[1] Data for 1789–1939 are for the administrative budget; data for 1940 and all following years are for the unified budget.
[2] In calendar year 1976, the Federal fiscal year was converted from a July 1–June 30 basis to an Oct. 1–Sept. 30 basis. The TQ refers to the transition quarter from July 1 to Sept. 30, 1976.

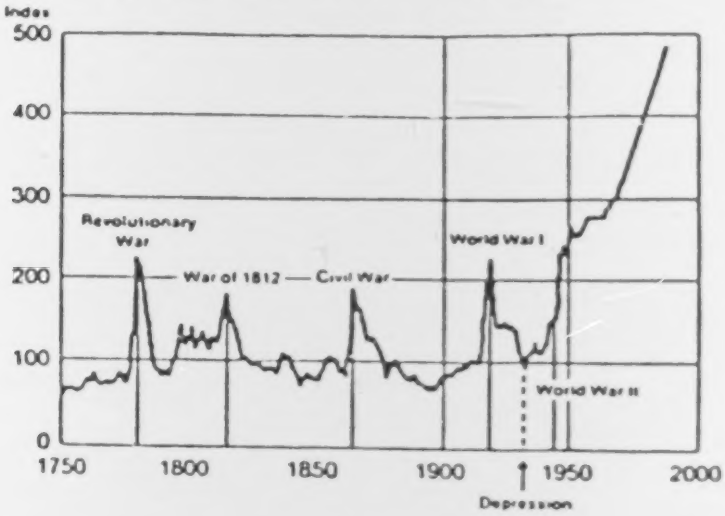
Despite the fact that an increasing share of this spending has been accounted for through deficit financing, Federal tax burdens have had to increase enormously in recent years to pay for these expenditures. Per capita tax receipts have nearly doubled in the past eight years alone, while the number of individual taxpayers paying more than 20 percent of their income to the Federal government has more than tripled in the past 15 years. Approximately 75 percent of all American families, through a combination of taxes and inflation, now have fewer real, after-tax dollars than 15 years ago.

Economic symptoms

From modest beginnings, the Federal government has grown to become the dominant economic institution in the United States. No other entity comes close to it in ability to condition the course of economic events. It is the view of the Committee that most of the economic difficulties currently being suffered by the nation are attributable, directly or indirectly, to recent economic policies pursued by the Federal government. Three statements summarize the consequences of increasing Federal deficits, taxation, and spending: (1) After two centuries of relatively stable prices, inflation although improving in recent years has not been fully under control for two decades; (2) Rather than sustained economic growth, the economy over the past two decades has been characterized by extended peri-

ods of economic stagnation; and (3) Rather than high levels of savings and capital formation, the economy has come to be characterized by relatively low levels of savings and capital formation.

FIGURE 1.—200 YEARS OF PRICE STABILITY



Source: Claremont Economics Institute, "Forecast Update, May 10, 1979."

The pattern of U.S. price levels from the beginning of our nation to the present is shown in figure 1. Typically, war-time inflation has been followed by a period of falling prices. As late as the 1930's, the index of prices was essentially at the same level as that of 150 years earlier. By contrast, the period following World War II is distinguished precisely by the failure of prices to return to their pre-war levels. Only in response to the price stabilizing policies of the 1950's was there a period of relative price equilibrium during the early 1960's. This period of stability, however, signaled only an end to the World War II and Koren War inflations; it did not contribute to a return to pre-war price levels. Since the mid-1960's, inflation has come to dominate the economy—an inflation unmistakably associated with the Federal deficits of the late 1960's and 1970's. Although recent efforts to restrain inflation have been relatively successful, nevertheless the 1939 dollar, which had declined to a value of forty cents by 1968, has declined to a value of well under twenty cents today.

As Federal spending and deficits have achieved peacetime record levels, the nation's economy has crested and fallen. From sustained high annual growth rates in the 1960's of 5 to 6 percent, the real economic growth of the country declined toward zero in 1980. The real gross national product actually declined in four separate years over the decade prior to 1980. The more that the Federal sector has drawn from the nation's economic product the less robust the economy has been. As the nation's annual growth declined, so too did its relative economic position among world economies.

Also closely associated with the pattern of rising Federal spending and deficits has been the sharply declining pattern of personal

savings and private investment. In recent years, personal savings have declined from seven to eight percent of disposable personal income to less than five percent, a greater than 50 percent reduction. At the same time, private domestic investment has steadily declined as a proportion of the GNP. These levels are now among the lowest in the world and among industrialized, Western nations.

Proximate cause and effect

The inflation which began in 1968 has been closely associated with large and continuing Federal deficits. These deficits have placed the Federal Reserve Banking System in an increasingly untenable position. If the Federal Reserve refuses to purchase the new debt offered by the Treasury, increasing pressure is placed upon private capital markets. Federal financing of deficits is competitive with private demand for borrowed funds. As a result, "crowding out" occurs as Federal borrowing displaces private borrowing, leading both to higher rates of interest and lower rates of private capital formation. As Professor Roger Freeman of the Hoover Institution summarizes it:

> If the Treasury competes for funds, it drives up interest rates and crowds out other would-be borrowers. Thereby, it reduces the funds which are available for private investment, holds back industrial expansion, and improvement in productivity and limits job creation.

If, on the other hand, the Federal Reserve purchases the new debt, the monetization of this debt may lead to a money supply growing faster than the economy's ability to absorb this growth without adding to prices. More money generally means higher prices for goods and services available in the economy. Higher prices today further generate expectations of even higher prices tomorrow. As former Chairman of the Federal Reserve, Arthur Burns, has observed:

> When the Government runs a budget deficit, it pumps more money into the pocketbooks of people than it takes out of their pocketbooks . . . The persistence of substantial deficits in Federal finances is mainly responsible for the serious inflation that got under way in this country in the mid-1960's . . . when the deficit increases at a time of economic expansion, as it has done lately, we should not be surprised to find the rate of inflation quickening.

Professor Milton Friedman notes further:

> Interest rates are high because inflation is high. Inflation is high because the rate of money creation is high.

Faced with abnormally large Federal budget deficits, the Federal Reserve has tended to purchase a significant portion of the new debt. As inflation has resulted, individuals have accelerated their purchase of consumer goods and services, in the process bidding up prices further, reducing personal savings, and reducing private capital formation.

Decades of inflation have done damage beyond swift correction. For instance, Congress has been under pressure to "index" a varie-

ty of its funding programs—from school lunches to Social Security—in an effort to maintain relative levels of funding. Such spending has, of course, contributed to still higher levels of Federal deficits.

Professor Lowell Harris of Columbia University summarizes the issue in the following manner:

> Easing the financing of a Federal deficit by supplying new bank credit (money) has appeal. New money can be injected into the economy easing someone's problems. Businesses and governments get dollars that had not existed. Such injections seem to permit the accomplishment of good things. But as the funds thus created add to the flow through the economy, the cumulating results will differ from the initial results. The dollar loses buying power. Budget deficits invite the creation of money, and monetary expansion lies at the base of inflation . . . Federal deficits tempt the use of money creation as a means of getting dollars for the Treasury without evident pain.

In the face of unusually high levels of Federal spending, the alternative to deficit financing is, of course, increased taxation. This, too, has adverse economic consequences, apart from the diminished freedom of the citizen to consume, as he chooses, the fruits of his own labor. More taxes mean less post-tax personal income. On the one hand, less income means less money to save, less money for private investment in future output, and less economic growth. On the other hand, less income after taxes means less incentive to engage in productive economic activity generally—less incentive to work, less incentive to invest, and less incentive to do the things that contribute to economic growth. High rates of income taxation further distort the allocation of productive resources, invariably toward less efficient use.

U.S. competitiveness in world markets

Experience with persistent large deficits in the 1980's has focused attention on another problem associated with excessive government borrowing: undermining the nation's trade position in world markets.

The huge borrowing needs of the Federal government, coupled with the credit demands of businesses and consumers, have required a huge influx of capital into the United States. Making the United States attractive to foreign investment has helped avoid any severe effects from "crowding out" private credit needs and has helped keep inflation and interest rates lower than they might otherwise be. But clearly the day of reckoning cannot be postponed for long when the Federal government incurs massive deficits year after year.

America's need for foreign capital has had a major—some would say disastrous—impact on the balance of trade. A strong dollar makes it more difficult for U.S. producers to sell their goods overseas, and easier for foreign producers to market their goods in the United States. At least in the short run, that means slower growth and fewer jobs in those sectors of the American economy that depend heavily on export markets. The decline in our manufactur-

ing sector, the loss of markets for our agricultural products, and our record trade deficit with Japan are bringing calls for new measures to protect American industries from foreign competition: measures which could threaten the prospects for healthy economic growth around the globe, ultimately destroying jobs and economic opportunity for Americans.

It is clear in any event that continuing massive budget deficits will have an enormous cost for the American economy. As economic growth accelerates in other developed countries, they will become more attractive to investment. The foreign investment that sustains our debt-ridden economy could dry up, and we would face the prospect of massive inflation or of skyrocketing interest rates that would bring the economy to a halt. The dangers of persistent deficits have never been clearer than they are today.

In the view of the Committee, a constitutional rule limiting the growth of Federal deficits, spending, and taxation would contribute substantially toward the restoration of stable prices, stable employment, and stable economic growth.

X. STATUTORY LAW VERSUS CONSTITUTIONAL AMENDMENT

An amendment to the Constitution is a serious step, one to be taken if and only if no other response is perceived as likely to prove effective. Alternatives to constitutional change deserve serious consideration. The major alternatives to a constitutional amendment of the kind proposed in this resolution are: (1) some measure of statutory restraint; (2) new resolve by Members of Congress to restrain levels of Federal spending, taxation, and deficit; or (3) the election to Congress of new Members who possess such resolve.

It is the view of the Committee that these alternatives are not effective alternatives. In one form or another, each of these alternatives has been employed in the past, with unsatisfactory results. There is little reason to believe that these alternatives will be any more effective in the future.

The first alternative is for Congress to resort to some form of statutory constraint. As pointed out in section VI, a large number of such constraints have been proposed over the years, with several of these having been enacted into law. None, however, has succeeded in constraining the Congressional propensity to spend tax, and engage in deficit financing. The most obvious reason for this, ultimately, is that no Congress can bind a succeeding Congress by a simple statute.

Put another way, no statutory measure can contain provisions requiring a greater or more onerous voting rule for its repeal than for its adoption. Any balanced budget or tax limitation statute can be repealed, in whole or in part, by the simple expedient of adopting a new statute or a new budget which is in conflict with the earlier measure. The existence of the Byrd-Grassley amendment, for example, requiring a balanced Federal budget for fiscal year 1981 (P.L. 95-435) has provided no deterrent whatsoever to Congress engaging in "business as usual" and adopting a budget with a deficit in excess of $50 billion for that fiscal year. Statutory limitations

remain effective only as long as no majority coalition forms to overcome such statutory constraints.

It is the premise of the proposed amendment that some greater rule is required if Congress is to overcome the spending bias existing within our political system. So long as simple majorities are able to engage in the same scope of fiscal practices as under present law—and they will always be able to do so if they are limited by nothing more than a simple statutory constraint—this spending bias will continue to exist. Congress will continue to have unlimited access to deficit spending and it will continue to have available automatic tax increases.

Since the adoption of the congressional budget reforms in 1974, for example, it is worth noting, Congress has achieved regular budget deficits of unprecedented proportions.

It is the existence of this fundamental bias that also mitigates against the effectiveness of the other alternatives: increased resolve to exercise fiscal restraint by Members of Congress or the election of Members who will demonstrate such restraint.

The premise of Senate Joint Resolution 13 is that there is a structural bias within our political system that causes higher levels of spending than desired by the people, not that a majority of Members of Congress are determined to engage in fiscally irresponsible policies. Senate Joint Resolution 13 is designed to enable Members of Congress to overcome this bias by establishing an external constraint upon the ambit of their fiscal activities. If this analysis is correct, the spending bias can be overcome only by an external constraint—something upon which Members of Congress can rely when spending interest pressures become excessive.

The alternatives to a Constitutional amendment are not viable precisely because the fiscal history that Congress has written over recent decades reflects a serious defect in the institutional setting within which it operates. Only a Constitutional amendment can correct this. Periodic efforts by Congress during times of economic crisis to exercise unusual fiscal restraint are simply insufficient. Rather, there must be continuing efforts in this regard in order to prevent such crisis, in the first place.

In a democracy, constitutions establish the structure of government by imposing restraints on the behavior of those who represent them. For years, the body politic has suffered from the removal of constraints upon the Congress imposed explicitly or assumed implicitly by the framers of the Constitution. The present amendment would reimpose, explicitly, those constraints as only a Constitutional amendment can.

XI. DETAILED ANALYSIS OF SENATE JOINT RESOLUTION 13

The key provisions of Senate Joint Resolution 13 are contained in sections 1 and 2. These sections must be read as provisions that operate in conjunction with one another.

Section 1 of the proposed amendment establishes, as a fiscal norm, a balanced Federal budget. It does so by requiring that Congress adopt a "statement" of planned receipts and outlays prior to each fiscal year, a statement in which planned outlays do not exceed planned receipts. If, in its judgment, circumstances warrant,

the Congress may adopt an amended statement of receipts and outlays for the fiscal year (provided that outlays do not exceed receipts) at any time during the fiscal year. By a three-fifths vote of the membership of each House of Congress, a statement may be adopted containing a specific level of deficit. Any amended statement containing a deficit would require a three-fifths vote only if such deficit were greater than the deficit in the previous statement.

Section 1 also mandates that actual Federal outlays not exceed the planned level of outlays set forth in the statement. Both Congress and the Executive would have continuing responsibilities in ensuring that this limit is not breached. Thus, actual outlays cannot exceed statement outlays which cannot exceed statement receipts (which cannot grow faster than the economy). At the same time, actual receipts may fall below planned receipts without requiring Congressional or Executive action as, for example, when an unanticipated recession causes revenues to fall below expectations during the course of a fiscal year.

Section 2 of the proposed amendment establishes, as a fiscal norm, that Federal receipts should grow no more rapidly than the growth of the economy from which they are derived. The balanced budget in section 1 should not be balanced at levels of receipts and outlays that consume an increasing proportion of the national economy. The proposed amendment attempts to achieve this by requiring that receipts reasonably expected to be received by the Federal government not increase by a percentage greater than the average percentage increase in the national income during some reasonable period ending prior to the beginning of the fiscal year. If, in its judgment, circumstances warrant, the Congress may permit a more rapid growth in receipts, but only upon a recorded vote of a majority of the membership of each House of Congress.

Under the Federal Government's system of taxation, Federal tax receipts grow more rapidly than national income during either periods of real growth or periods of nominal growth caused by inflation. Stabilizing the share of that income available to the Federal government (as provided by section 2) would require Congress to enact annual tax cuts or to "index" the tax system, unless it was prepared to vote annually for tax increases that would increase the Federal government's share of the economy.

Section 1 and 2, in conjunction, establish a linkage between the growth of the economy and the growth of Federal outlays. Since receipts cannot grow faster than the economy (section 2) and outlays cannot exceed receipts (section 1), Senate Joint Resolution 13 also would establish, as a fiscal norm, that Federal outlays cannot grow faster than the economy (sections 1 and 2).

The relationship between the average growth of national income during the reasonable prior period and the growth of receipts during the fiscal year provides the Congress with reasonably precise guideposts in its budgeting process, minimizing the necessity for estimations. Under current practices, reasonably precise estimates of the growth in national income are available by mid-July prior to the beginning of each fiscal year. Even earlier estimates are available in January, soon after the close of the calendar year. The mid-July estimates, therefore, should cause only marginal revi-

sions in the "statement" for the coming fiscal year. The Congress is free to choose any one of several estimates of national income, e.g., gross national product, national income, etc., as a benchmark for growth.

The relationship between the average growth of national income during some reasonable period prior to the beginning of the fiscal year and the growth of Federal receipts during the fiscal year also establishes the Federal budgetary process as an at least mildly "countercyclical" instrument of fiscal policy. The lag between the midpoint of the national income period and the midpoint of the fiscal year leads to permissible receipts growing more rapidly than the fiscal year national income during periods of recession, thus moderating down-turns in the economy. This same lag leads to permissible receipts growing more slowly during periods of expansion, thus moderating upturns in the economy.

The Committee on the Judiciary, in reporting favorably on Senate Joint Resolution 13, did so on the assumption that the proposed amendment's provisions would be construed as follows:

Generally

". . . *the Congress* . . ." is intended to have the same meaning as it does elsewhere in the Constitution of the United States as, for example, in Article I, section 1.

". . . *fiscal year* . . ." is intended as a term defined by statute and, as such, is to have no constitutional standing apart from its statutory definition. Under current law, the Federal fiscal year begins on 1 October of one calendar year and ends on 30 September of the following calendar year. The amendment does not require an immutable definition of fiscal year; other fiscal years could be defined without straining the intent of the amendment.

". . . *statement* . . " is intended to be construed in a manner not unlike that in Article I, section 8 of the Constitution providing for "a regular statement and account of the receipts and expenditures of all public moneys". The sense of "statement" is common to both. The difference between the two is that the Article I statement refers to experienced or actual receipts and outlays, while the statment here is intended to refer to expected or anticipated receipts and outlays. That is, the one is historical or backward-looking, whereas the other is future or forward-looking.

Because the amendment statement looks to the future, a future necessarily shrouded in some measure of uncertainty as to the precise circumstances that will be experienced, reasonable persons may disagree as to the proper amounts of receipts and outlays to be expected. As a practical matter, a Congressional majority will be the final arbiter among the estimates. At most, this majority can be charged with adopting better rather than worse estimates of receipts and outlays for the coming fiscal year.

Sensitive to the role of Congress as estimates arbiter, section 1 of the amendment requires that statement outlays not exceed statement receipts (except as provided in the third sentence of section 1) and provides a maximum which statement receipts cannot exceed for any fiscal year (in section 2). Within those limitations, the Congress is expected to act reasonably with respect to the anticipated levels of receipts and outlays in the statement.

As the fiscal year unfolds, experienced or actual receipts may or may not meet expectations. An unexpectedly more robust economy typically will generate actual receipts in excess of statement receipts; an unexpectedly weaker economy typically will generate actual receipts below statement receipts. Either is permissible under the provisions of this amendment. The amendment imposes no obligation upon the Congress to react to the flow of actual receipts during the fiscal year.

The analogous approach to actual and statement outlays, however, is conditioned by the fourth sentence of section 1.

The statement of receipts and outlays may be as simple as a single sentence in which the total of anticipated receipts and the total of anticipated outlays for the coming fiscal year are set forth; the statement may be as complicated as the detailed Budget of the United States Government in which the expected or anticipated revenues from every source and the maximum spending of every governmental agency are set forth.

"*. . . the whole number of both Houses . . .*" is intended to be consistent with the use of the phrase "the whole number of Senators" in the 12th Amendment to the Constitution, denoting the entire membershp of the individual House of Congress in question.

"*. . . both Houses . . .*" is intended to identify the Senate and the House of Representatives, each acting separately, in keeping with uses of the terms "both Houses", the "Senate", and the "House of Representatives" now in the Constitution. Specifically, "both Houses" is not intended to connote a joint session of Congress, or of its equivalent.

Section 1, 1st sentence

> Prior to each fiscal year, the Congress shall adopt a statement for that year in which total outlays are not greater than total receipts.

"*Prior to each fiscal year . . .*" is intended, under current law, to require the Congress to adopt the indicated statement of receipts and outlays of the applicable fiscal year "prior to", or before, 1 October of the calendar year in which that fiscal year begins. Should the fiscal year be redefined by law, "prior to" would refer to that day of the calendar year corresponding to the first day of the redefined fiscal year.

"*. . . adopt . . .*" is intended to be interpreted in the context of those resolutions adopted by Houses of Congress without the approval of the President. The first and second budget resolutions adopted by the Congress under provisions of the Congressional Budget and Impoundment Control Act of 1974 serve as examples of such resolutions. Procedurally, the required statement may be adopted by a simple majority of each House.

"*. . . shall adopt . . .*" is intended as a constitutional mandate for action by the Congress. In the absence of explicit Congressional adoption of a statement of receipts and outlays consistent with the provisions of this article prior to the first day of a new fiscal year, there is an implied adoption of a statement in which both receipts and outlays are zero. In conjunction with the fourth sentence of this section, the Congress and the President would be mandated

constitutionally to ensure that fiscal year outlays also would be zero.

". . . *for that year* . . ." is intended to refer to that fiscal year prior to which a statement of receipts and outlays must be adopted.

". . . *in which* . . ." is intended to refer to the statement of receipts and outlays.

". . . *total outlays are not greater than total receipts* . . ." is intended to establish the fiscal norm to which the Congress is to be held year in and year out: the total of anticipated outlays shall not exceed the total of anticipated receipts in any fiscal year. The total of outlays, however, may be less than the total of receipts in order to permit redemption of public debt.

Section 1, 2nd sentence

> The Congress may amend such statement provided amended outlays are not greater than amended receipts.

". . . *may amend* . . ." is intended to provide the Congress with the necessary flexibility to replace any previously adopted statement with a new statement of anticipated receipts and outlays. Both circumstances and the totals of receipts and outlays appropriate to those circumstances may change at any time prior to or during the fiscal year to which such statement is applicable. In response, the Congress may, but need not, revise the total of anticipated receipts and/or the total of anticipated outlays by amending any statement adopted for the fiscal year at an earlier moment.

". . . *such statement* . . ." is intended to refer to the most recently adopted statement for any fiscal year, whether adopted prior to or during the year. For any fiscal year, only one statement can be operative at any moment in time—that is, the statement most recently adopted. There cannot be both an initial and an amended statement; there can be only an initial statement or an amended statement.

". . . *amended outlays* . . ." and ". . . *amended receipts* . . ." are intended to refer to the total of outlays and the total of receipts as these are changed or revised from the total of outlays and the total of receipts in the most recently adopted statement for the fiscal year.

". . . *provided amended outlays are not greater than amended receipts* . . ." is intended to continue unabated the fiscal norms mandated in the first sentence of this section and in the second section.

Section 1, 3rd Sentence

> With the approval of three-fifths of the whole number of both Houses, the Congress, in such statement, may provide for a specific excess of outlays over receipts.

". . . *three-fifths of the whole number* . . ." is intended to identify the minimum proportion of the total membership of each House needed for action by the Congress. Under current law, three-fifths of the Senate membership is 60 and of the House of Representatives is 261. Vacancies would reduce these mimimum majorities.

"*With the approval of* . . ." is intended to recognize the possibility that circumstances may arise in light of which the Congress will determine that adherence to the fiscal norms of the first and

second sentences of this section would be inconsistent with the welfare of the American people.

". . . *in such statement* . . ." is entended to refer to any statement of receipts and outlays for the fiscal year adopted subsequent to the three-fifths vote providing for a specific excess of statement outlays over statement receipts. Any subsequent statement of receipts and outlays may be adopted by a simple majority of each House of Congress, provided that total of outlays in that statement does not exceed the total of receipts by more than the excess approved pursuant to this sentence. It is not intended that every subsequent statement of receipts and outlays containing an excess of outlays over receipts be adopted by a minimum three-fifths majority of the whole number of each House.

". . . *may provide for* . . ." is intended to be permissive, not mandatory. That is, statements of receipts and outlays adopted subsequent to this three-fifths determination may provide for a smaller excess of outlays over receipts.

". . . *specific excess of outlays over receipts* . . ." is intended to identify the maximum number of dollars by which outlays may exceed receipts in the statement of receipts and outlays for the fiscal year adopted by the Congress pursuant to the first and second sentences of this section.

Of necessity, there would be a rollcall vote in determining whether there exists a three-fifths majority in each House in favor of a specific level of deficit. The Committee intends that the substance of such a vote be restricted to the issue of such a deficit. For example, it would be inconsistent with the objectives of this provision if such a deficit were conditioned or qualified by particular circumstances (e.g. "Whenever the measure of unemployment exceeds ten percent"), or if there was specification of the uses to which the excess outlays were to be allocated. Neither a provision for excess outlays attached as a rider to a resolution addressing some other subject nor a resolution to which a rider addressing some other subject has been attached would be consistent with this provision.

Section 1, 4th Sentence

> Actual outlays shall not exceed the outlays set forth in such statement.

The general obligations of this sentence—to ensure that actual outlays do not exceed the statement level of outlays—is one imposed jointly upon the Congress and the President, each in the exercise of their existing constitutional powers. There is a mandate to monitor the flow of actual outlays and to take such steps as are necesary and proper to prevent them from exceeding the total of statement outlays. This sentence neither anticipates nor necessitates any alteration in the balance of powers between the legislative and executive branches of the national government, but merely imposes an additional responsibility upon each of these, to be achieved through the exercise of existing authorities.

". . . *Actual outlays* . . ." and ". . . *outlays set forth in such statement* . . ." are intended to refer to the distinction explored above between the total of outlays actually made during the course of the fiscal year and the total of outlays which were expected or

anticipated prior to or earlier in the fiscal year. The one is dictated, in part, by circumstances as they do unfold; the other is conditioned by the circumstances expected to unfold.

". . . *shall not exceed* . . ." is intended to permit actual outlays to be less than or equal to statement outlays. Actual outlays must not be greater than statement outlays.

". . . *Actual outlays shall not exceed outlays set forth* . . ." is intended to establish a linkage between the appropriation process and the statement of receipts and outlays adopted pursuant to this section. Both Article I, Section 9 of the Constitution and the Congressional Budget and Impoundment Control Act of 1974 establish Congressional control over the disbursement of funds. This sentence, then, completes the linkage of the established budget and spending control process and this amendment.

The full set of linkages intended by the amendment may be summarized as follows:

Actual outlays not to exceed statement outlays—4th sentence of section 1.

Statement outlays not to exceed statement receipts—1st and 2nd sentences of section 1.

Statement receipts not to exceed statement receipts of prior fiscal year adjusted for growth of the economy—section 2.

Section 2

> Total receipts in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the previous year, unless a majority of the whole number of both Houses shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.

"*Total receipts . . . pursuant to this article . . .*" is intended to refer to the total of anticipated receipts recorded in the statement of receipts and outlays for any fiscal year mandated under section 1 of the amendment, whether adopted prior to or subsequently amended during the fiscal year.

" . . . *increase* . . ." is intended to be construed in the sense of having the capacity to be positive, zero, or negative. A "negative increase", which would be termed a "decrease" in everyday language, would occur if the measure of national income declined from year to year.

" . . . *rate* . . ." is intended in the sense of the rate of change from year to year.

The "rate of increase in statement receipts", r, may be expressed symbolically as

$$r=[R(y+2)/R(y+1)]-1$$

where $R(y+2)$ represents the statement receipts for the $y+2$th fiscal year and $R(y+1)$ represents the statement receipts for the preceding or $y+1$th fiscal year.

The "rate of increase in national income", n, may be expressed symbolically as

$$n=[N(y)/N(y-k)^{1/k}-1$$

where N(y) represents the measure of national income in the yth calendar year and N(y−k) represents the measure of national income in the y−kth calendar year.

". . . *national income* . . ." is intended to be construed in the general or generic sense of the national income of the United States of America. In "A Primer of Gross National Product Concepts and Issues" (April 1981), the General Accounting Office describes national income in the following terms:

> The national income and product accounts are a means of measuring the Nation's annual output of final goods and services at their market value. The accounts register the economy's output of finished goods and services and the incomes which flow to resource owners from their contribution to output. The accounts thus present for the Nation's economy the sort of information contained in a business' profit and loss statement or a household budget. They balance the flow of income earned against the flow of spending on the economy's output of goods and services.
>
> The Nation's output measured as national income and product provides a gauge of the economy's performance and can be interpreted as a yardstick of the country's material well-being.

The precise concept of national income is intended to remain subject to the discretion of the Congress. Currently reported concepts include Gross National Product, Net National Product, National Income, and Gross Domestic Product. Any of these may be chosen, as might as some new measure determined by the Congress.

For the purposes of the amendment, there is no requirement that the concept of national income, its definition, or its computational procedures remain immutable through time. If some new concept, definition, or computational method is adopted, continuing compliance requires only that there be a one-time, overlap year in which the measure of national income is derived under both the old and the new concept, definition, or computational procedures. During this transition year, the rate of increase in the national income would be measured under the old approach. Thereafter, the rate of increase would be measured under the new approach. Thus compliance requires only that there be a transitional period during which the new approach is phased in so as not to undermine the plain purposes of section 2.

". . . *in the previous year* . . ." is intended to provide the Congress with a base period for determining the permissible level of receipts in the subsequent prefiscal year budget statement. The "previous year" refers generally to that calendar year ending prior to the outset of the fiscal year for which such statement is being prepared. There is sufficient flexibility, however, in this term to accommodate "years" which are not identical with calendar years to the extent that this becomes necessary. For example, if the fiscal year were to be restructured to commence on January 1 of each year, it might well be the case that the Congress would want to use as the "previous year" one ending prior to December 31 in order to

ensure the availability of necessary economic data. It would, however, be wholly inconsistent with the intent of this provision for Congress to repeatedly adjust the base year in order to manipulate such data.

Under current law, the first day of the fiscal year is 1 October, the last day of the calendar year ending before 1 October of that calendar year is the 31st day of December of the previous calendar year. Thus, under current law, the rate of increase in statement receipts for fiscal year 1986 would be related to the average rate of increase of national income for the appropriate number of calendar years including calendar year 1984—since fiscal year 1986 begins in calendar year 1985.

Should the Congress determine that a redefined fiscal year would be appropriate, adjustments in the amendment's intended relationships between fiscal and calendar years would be required, commensurate with the redefinitions. Should the Congress determine that a two-year or twenty-four month fiscal year would be appropriate, the commensurate rate of increase in national income would be over two calendar years. The amendment's intentions are consistent with such re-interpretations.

Under current budgeting procedures, the Congress receives the budget message of the President in mid-January—at about the time the first preliminary estimates of the national income data for the previous calendar year are being prepared. These preliminary estimates are revised some four weeks later and revised once again four more weeks later. Thus, by mid-March, the Congress has available the second estimates of the growth of national income for the previous calendar year as a basis for planning the coming fiscal year's receipts and outlays. By July, the Congress will have available the first full set of detailed estimates of national income growth for the previous calendar year, well before the second budget resolution in September.

The national income estimates for any calendar year subsequently are revised in July of the second and third calendar years following the end of that calendar year. For the purposes of the amendment, each of these revisions should adjust commensurately the statement receipts for the fiscal year to begin following the revision. Such adjustments generally will be minor but will guarantee that the statement receipts do not lose touch with the growth of national income over time. The adjustment of statement receipts, however, is not intended to mean any revision of estimated or actual receipts and outlays either for the fiscal year in which such revisions are announced or for the fiscal year to which such revisions would have been applicable had they been available.

"*Total receipts . . . in the previous year . . .*" is intended to set forth the fiscal norm to which the Congress will be held. The increase in statement receipts year to year should not be proportionately greater than the proportionate increase in national income. Statement receipts may, but need not, rise by less than the proportionate increase in national income. Specifically, a fiscally frugal Congress may adopt statement receipts which are less than the maximum permitted under this section by a simple majority of those voting on the statement adopted pursuant to section 1. Such a smaller than proportionate increase in statement receipts then

would become the base for statement receipts in the subsequent fiscal year and, by linkage, to all future fiscal years.

Symbolically, r must be less than or equal to n, where r and n are the growth rates of statement receipts and national income respectively, as discussed above under ". . . rate . . .". Upon substitution for r and n, this relaltionship leads to the following relationship between the statement receipts of one fiscal year (y+2) and those of the preceding fiscal year (y+1):

$$R(y+2) <= R(y+1)[N(y)/N(y-k)]^{1/k}$$

where N(y) represents the national income of the calendar year ending immediately prior to the calendar year in which the fiscal year begins and N(y−k) represents the national income of the calendar year ending k years prior to the calendar year in which the fiscal year begins.

". . . *majority of the whole number* . . ." is intended to identify the minimum proportion of the total membership of each House needed for action by the Congress on the revenue bill by which a greater increase in statement receipts is to be provided. Under current law, a majority of the Senate membership is 51 and of the House of Representatives is 218. Vacancies would reduce these minimum majorities.

". . . *shall have passed a bill* . . ." is intended to be interpreted in the context of article I, section 7, paragraphs 1 and 2, dealing with revenue bills.

". . . *specific additional receipts* . . ." is intended to impose upon the Congress an obligation to adopt such specific changes in specific revenue laws as are required to generate the additional revenues commensurate with the greater increase in statement receipts desired by the majority of the Congress. Where existing revenue laws would generate estimated receipts in excess of the statement receipts otherwise permitted under this section, the Congress must approve a bill setting forth those specific revenue reductions which otherwise would have been forthcoming and waiving such reductions.

". . . *directed solely to approving specific additional receipts* . . ." is intended to restrict the language of the bill to the specific changes necessitated by the greater increase in receipts. The bill cannot include qualifying or conditioning clauses regarding a specification of conditions under which the bill is to be effective or specification of the uses to which the additional receipts would be allocated. Neither an approval of additional receipts attached as a rider to a bill addressing some other subject nor a bill to which a rider addressing some other subject has been attached shall be valid for purposes of this clause.

". . . *such bill has become law* . . ." is intended to invoke the provisions of Article I, section 7, paragraph 2 wherein the President has approved the bill or, the bill having been returned to the Congress shall have been reconsidered and shall have been passed by the required two-thirds of each House.

Section 3

The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

". . . *may waive* . . ." is intended to provide Congress with discretionary authority to operate outside of the provisions of particular sections of this amendment in the event of declarations of war. Such a waiver would be by concurrent resolution of Congress, a resolution which would not have to be submitted to the President for approval or disapproval.

". . . *the provisions of this article* . . ." is intended to refer primarily to sections 1 and 2 of the amendment. The Congress may waive any or all of these provisions. Waiver of sections 3, 5, or 6 would seem pointless.

". . . *declaration of war* . . ." is intended to be construed in the context of the powers of the Congress to declare war under Article 1, section 8, neither adding to nor subtracting from those powers. The committee intends that ordinary and prudent defense appropriations and preparations for a war perceived by the Congress to be imminent be funded fully within the limitations imposed by the amendment although Congress may establish higher levels of spending and/or deficits for these or any other purposes under sections 1 and 2.

". . . *for any fiscal year . . . is in effect* . . ." is intended to require a waiver of the provisions of the amendment on a year by year basis. That is, Congress cannot adopt a waiver resolution which shall apply to more than one fiscal year. Rather, the Congress annually must adopt a separate waiver for the fiscal year at issue.

Although this section is identical to language contained in each of the earlier versions of S.J. Res. 13, including that approved by the Senate in 1982, some proponents of the measure have raised concern about whether the language of section 3 goes far enough in assuring that Congress could respond to urgent threats to national security.

Senator Heflin offered an amendment in Committee, which was defeated 10–7, designed to respond to this concern. The Heflin amendment would automatically waive the balanced budget requirement in time of declared war; authorize the Congress to waive such requirement if the United States is engaged in military conflict which causes an "imminent military threat to the national security"; and enable Congress to provide for additional outlays for the defense of the nation if Congress declares by an absolute majority of the whole number of each House that there is an "unforeseen and imminent military threat to the national security", through a joint resolution enacted into law.

Although there was virtually unanimous consensus that Congress ought to retain maximum flexibility in responding to national security crises, the majority of the Committee felt that S.J. Res. 13 already dealt adequately with this. In the event of a defense-related emergency, the Congress under S.J. Res. 13 could: (a) waive the entire amendment in case of declared war; (b) waive the balanced budget requirement by three-fifths vote; (c) waive the spending-taxing ceiling by a majority of the whole number; or (d) adjust spending priorities within the existing budget by a simple majority vote. Further, it was contended that the approximately $70 billion Defense Department operation and maintenance account exists for the very purpose of ensuring that the armed services are always able to respond in a timely manner to military threats.

Proponents of Senator Heflin's amendment felt, on the other hand, that the existing provisions of the amendment are excessively restrictive and that a three-fifths vote requirement to allow for defense spending may prove too difficult or time consuming. Concern was expressed that appropriate military responses might be dependent on the expediency of the moment. Senator Heflin described his amendment as a "safeguard mechanism" to be used in those situations in which 60 votes may be impossible to achieve but in which Congressional majorities (and the President) support the use of such funds.

The Committee acknowledges that the Heflin amendment has substantial merit and it is expected that further efforts at negotiation and compromise will continue on this important issue as S.J. Res. 13 approaches floor consideration.

Section 4

> This article shall take effect for the second fiscal year beginning after its ratification.

". . . *shall take effect* . . ." is intended to be interpreted in the same manner as the same phrase contained in Section 5 of the 20th Amendment.

". . . *for the second fiscal year beginning* . . ." means that all of the obligations imposed upon Congress and the President by this amendment for any fiscal year shall be complied with for such fiscal year, the first day of which begins at least one full fiscal year and less than two full fiscal years after the date of ratification. Under current law, if the date of ratification was on or before September 30, 1985, the amendment would require first adoption of the statement of receipts and outlays by September 30, 1986; if the date of ratification was on or after October 1, 1985, the first adoption of the statement would not be required before September 30, 1987.

". . . *its ratification* . . ." is intended to be construed as ratification of this article under Article V of the Constitution.

Definitions

Because it believed report language to be adequate in addressing the issue, the Committee in approving S.J. Res. 13 excluded a definitional section contained in previous versions of the amendment which read as follows:

> Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principal.

Although this language was believed to be unnecessary in the body of the proposed amendment, it continues to reflect the intent of the Committee in approving the constitutional amendment. The following is a further elaboration of these terms:

". . . *receipts* . . ." is intended to include all moneys received by the Treasury of the United States, either directly or indirectly, through Federal or quasi-Federal agencies created under the authority of acts of Congress. In present usage, receipts is intended to

by synonymous with the definition of "budget receipts". A Glossary of Terms Used in the Budget Process" (1981) defines "budget receipts" as:

> Collections from the public (based on the Government's exercise of its sovereign powers) and from payments by participants in certain voluntary Federal social insurance programs. These collections, also called governmental receipts, consist primarily of tax receipts and social insurance premiums, but also include receipts from court fines, certain licenses, and deposits of earnings by the Federal Reserve System. Gifts and contributions (as distinguished from payments for services or cost-sharing deposits by State and local governments) are also counted as budget receipts. Budget receipts are compared with total outlays in calculating the budget surplus or deficit. Excluded from budget receipts are offsetting receipts which are counted as deductions from budget authority and outlays rather than as budget receipts.

Such receipts are not intended to include "off-setting collections" which *Glossary* defines as:

> Collections from Government accounts or from transactions with the public that are of a business-type or market-oriented nature. They are classified into two major categories: (a) collections credited to appropriation or fund accounts, and (b) off-setting receipts (i.e., amounts deposited in receipt accounts). In general, the distinction between these two major categories is that "collections credited to appropriation or fund accounts" normally can be used without appropriation action by Congress, whereas funds in "receipt accounts" cannot be used without being appropriated. Offsetting collections are deducted from disbursements in calculating total outlays. Corresponding offsets are made in arriving at total budget authority and net obligations incurred.
>
> "Collections credited to appropriation or fund accounts" occur in two circumstances:
>
> *Reimbursements*
>
> When authorized by law, amounts collected for materials or services furnished are treated as reimbursements to appropriations. For accounting purposes, earned reimbursements are also known as revenues. These collections are netted in determining outlays from such appropriations.
>
> *Revolving funds*
>
> In the three types of revolving funds—public enterprise, intra-governmental, and trust revolving—collections are netted against spending and outlays are reported as the net amount.
>
> Offsetting receipts are amounts deposited in receipts accounts (i.e., general funds, special funds, or trust fund).

These receipts generally are deducted from budget authority and outlay by function and/or subfunction, and by agency.

"Offsetting receipts" are subdivided as follows:

Proprietary receipts from the public

Collections from the public deposited in receipts accounts of the general fund, special funds, or trust funds as a result of the Government's business-type or market-oriented activities (e.g., loan repayment, interest, sale of property and products, charges for nonregulatory services, and rent and royalties). Such collections are not counted as budget receipts, and with one exception, are offset against total budget authority and outlays by agency and by function. The exception consists of receipts from rents and royalties from Outer Continential Shelf lands that are deducted from total budget authority and outlays for the Government as a whole rather than from any single agency or function.

Intragovernmental transactions

Payments into receipt accounts from Federal appropriations or fund accounts. They are treated as an offset to budget authority and outlays, rather than as a budget receipt. Intragovernmental transactions may be intrabudgetary (where both the payment and receipt occur within the budgetary universe) or they may result from the payment by an off-budget Federal entity whose funds are excluded from the budget totals. Normally, intragovernmental transactions are deducted from both the outlays and the budget authority for the agency receiving the payment. However, in two cases, these transactions are not deducted from the figures of any energy or function. Instead, intragovernmental transactions that involve agencies' payments (including payments by off-budget Federal entities) as employers into employee retirement trust funds and the payment of interest to nonrevolving trust funds appear as special deduct lines in computing total budget authority and outlays for the Government.

Also not intended to be a receipt for the purpose of this section are "refunds", defined by Glossary as:

Returns of advances or recoveries or erroneous disbursements from appropriation or fund accounts that are directly related to, and reductions of, previously recorded payments from the accounts. Also considered refunds are returns to the taxpayers of receipt collections in excess of liabilities (i.e., tax refunds). These refunds are recorded only if the cash is actually disbursed to the taxpayers. If the taxpayer chooses to apply credits for tax refunds to succeeding tax liabilities, the transaction is not recorded as a refund. In certain cases, payments are made under refund authority that exceed tax liabilities. Such excesses over li-

abilities are treated as budget outlays rather than refund of receipts.

Specifically, receipts are to be distinguished from "revenues." The U.S. Department of Commerce's Governmental Finances defines "revenue" as:

> All amounts of money received by a government from external sources—net of refunds and other correcting transactions—other than from issue of debt, liquidation of investments, and as agency and private trust transactions. Excludes noncash transactions such as receipts of services, commodities, and other "receipts in kind".

While alike in excluding refunds and debt, revenues does not exclude offsetting receipts from the sale of services to the public. For the purposes of the amendment, it is intended that these offsetting receipts not be construed to be a part of "receipts".

". . . *except those derived from borrowing* . . ." is intended to exclude from receipts the proceeds of debt issuance. To "borrow" is to receive with the implied or expressed intention of returning the same or an equivalent. As noted, budget receipts include contributions to social insurance programs, even though they carry an implied intention of returning the same or an equivalent. It is intended that such contributions be included in "receipts" and not in those receipts derived from borrowing. The differing treatment intended turns on the distinction between those receipts which create obligations the title to which can be transferred by the present owner to others, either by sale or by gift, and those receipts which, while creating an implied obligation to return the same, do not create a transferable title. Treasury notes and bonds fall into the first class of obligation; social insurance programs fall into the second class of obligations.

Also excluded from borrowings are those temporary obligations represented by accounts payable. While these obligations normally are transferable by their owners, they do not generate a flow of receipts to the Treasury at the moment of creation, although they do constitute an "outlay" when extinguished.

". . . *total receipts* . . ." is intended to be construed as the summation or a total of all receipts, exclusive of borrowings and certain other classes of receipts, which the Congress reasonably can expect to be received by the Treasury of the United States during the fiscal year in question.

". . . *outlays* . . ." is intended to include all disbursements from the Treasury of the United States, either directly or indirectly through Federal or quasi-Federal agencies created under the authority of acts of Congress, and either "on-budget" or "off-budget". With certain notable exceptions, outlays are those withdrawals subject to Article I, section 9 which provides that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law". *Glossary* defines "outlays" in the following manner:

> Obligations are generally liquidated when checks are issued or cash disbursed. Such payments are called outlays. In lieu of issuing checks, obligations may also be liquidated (and outlays occur) by the maturing of interest

coupons in the case of some bonds, or by the issuance of bonds or notes (or increases in the redemption value of bonds outstanding). Outlays during a fiscal year may be for payment of obligations incurred in prior years (prior-year outlays) or in the same year. Outlays, therefore, flow in part from unexpended balances of prior-year budget authority and in part from budget authority provided for the year in which the money is spent. Total budget outlays are stated net of offsetting collections, and exclude outlays of off-budget Federal entities. The terms expenditure and net disbursement are frequently used interchangeably with the term outlays.

Glossary defines "budget authority" as:

> Authority provided by law to enter into obligations which will result in immediate or future outlays involving Federal Government funds, except that budget authority does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government. The basic forms of budget authority are appropriations, authority to borrow, and contract authority. The latter two types of authority are also commonly referred to as "backdoor authority".

The major forms of budget authority include the following:

Appropriations

An authorization by an act of Congress that permits Federal agencies to incur obligations and to make payments out of the Treasury for specified purposes. An appropriation usually follows enactment of authorizing legislation. An appropriation act is the most common means of providing budget authority, but in some cases the authorizing legislation itself provides the budget authority. Appropriations do not represent cash actually set aside in the Treasury for purposes specified in the appropriation act; they reprsent limitations of amounts which agencies may obligate during the period of time specified in the respective appropriations act. Several types of appropriations are not counted as budget authority, since they do not provide authority to incur additional obligations. Examples of these include:

> Appropriations to liquidate contract authority—congressional action to provide funds to pay obligations incurred against contract authority;
>
> Appropriations to reduce outstanding debt—congressional action to provide funds for debt retirement; and,
>
> Appropriations for refunds of receipts.

Authority to borrow

Also called borrowing authority or authority to spend debt receipts. Statutory authority that permits a Federal agency to incure obligations and to make payments for specified purposes out of borrowed monies.

Contract authority

Statutory authority that permits obligations to be incurred in advance of appropriations or in anticipation of receipts to be credited to a revolving fund or other account. (By definition, contract authority is unfunded and must subsequently be funded by an appropriation to liquidate obligations incurred under the contract authority, or by the collection and use of receipts.)

Glossary defined "off-budget Federal entities" as:

Certain federally owned and controlled entities whose transactions (e.g., budget authority or outlays) have been excluded from budget totals under provisions of law. The fiscal activities of these entities, therefore, are not reflected in either budget authority or budget outlay totals. However, the outlays of off-budget Federal entities are added to the budget deficit to derive the total Government deficit that has to be financed by borrowing from the public or by other means.

The Glossary of the *United States Budget in Brief* (OMB, 1982) notes that these "transactions belong in the budget under current budget accounting concepts." It is the intention of the Committee that the outlays of these off-budget entities be included with on-budget outlays for the purposes of the various provisions of the amendment.

Among the Federal programs that would not be covered by S.J. Res. 13 is the electric power program of the Tennessee Valley Authority. Since 1959, the financing of that program has been the sole responsibility of its own electric power ratepayers—not the U.S. Treasury and the nation's taxpayers. Consequently, the receipts and outlays of that program are not part of the problem S.J. Res. 13 is directed to solving.

Specifically, outlays are to be distinguished from "expenditures" as currently defined. The U.S. Department of Commerce's *Government Finances* defines "expenditure" as:

All amounts of money paid out by a government—net of recoveries and other correcting transactions—other than for retirement of debt, investment in securities, extension of credit, or as agency transactions. Expenditure includes only external transactions of a government and excludes noncash transactions such as the provision of perquisites or other payments in kind.

While alike in excluding debt and interagency transactions, expenditures does not exclude those outlays reduced by offsetting receipts from the sale of services to the public. For the purposes of the amendment, it is intended that these offset outlays not be construed to be a part of "outlays". In addition, the concept of expenditures does not include certain "off-budget" outlays treated as loans or exchanges of assets. For the purposes of the amendment, it is intended that all "off-budget outlays" be construed to be a part of "outlays".

Like "receipts," "outlays" is intended to exclude interagency and intra-agency transactions.

". . . *except those for repayment of debt principal* . . ." is intended to exclude from outlays repurchase and/or retirement of Federal debt. *Glossary* defines "federal debt" as follows:

> There are three basic tabulations of Federal debt: gross Federal debt, debt held by the public, and debt subject to statutory limit.

Gross federal debt

Consists of public debt and agency debt and includes all public and agency debt issues outstanding. "Public debt" is that portion of the Federal debt incurred when the Treasury or Federal Financing Bank (FFB) borrows funds directly from the public or another fund account. To avoid double counting, FFB borrowing from the Treasury is not included in public debt. (The Treasury borrowing required to obtain the money to lend the FFB is already part of the public debt.)

"Agency debt" is that portion of the Federal Debt incurred when a Federal agency, other than Treasury or the Federal Financing Bank (FFB), is authorized by law to borrow funds directly from the public or another fund or account. To avoid double counting, agency borrowing from Treasury or the FFB and Federal fund advances to trust funds are not included in the Federal debt. (The Treasury or FFB borrowing required to obtain the money to lend to the agency is already part of the public debt.)

Debt held by the public

Part of the gross Federal debt held by the public. (The Federal Reserve System is included in "the public" for this purpose.) Debt held by Government trust funds (e.g., Social Security Trust Fund), revolving funds, and off-budget Federal entities is excluded from debt held by the public.

Debt subject to statutory limit

As defined by the Second Liberty Bond Act of 1917, as amended, it currently includes virtually all public debt. However, only a small portion of agency debt is included in this tabulation of Federal debt.

"*Principal*" is intended to be distinguished from "interest" and refers to a capital sum due as a debt. Specifically excluded from principal is any interest accrued or paid in conjunction with the debt obligation.

As with receipts, there is no intention to exclude from outlays those benefit payments arising from social insurance programs. As noted, receipts into such programs do not create, and the benefit payments attendant thereto do not extinguish, a transferable obligation—in contrast to Federal debt. Also as noted, there is no intention to exclude from outlays those disbursements arising from accounts payable unless the associated outlays already have been accrued. To treat accounts payable otherwise would be to double-count the outlays attendant thereto.

Loans for which the Federal Government guarantees in whole or in part the repayment of principal and/or interest impose no funding obligation on the Treasury unless and until such loans come into default and the Treasury must discharge the guarantee obligation. Such a discharge is intended to be construed as an outlay in the fiscal year of discharge, not in the fiscal year during which the loan was guaranteed. Such a discharge is not intended to be construed as a repayment of debt principal; unlike the debt repayments to be excluded, such discharges do not involve a prior receipt by the Treasury of borrowed funds.

". . . *total outlays* . . ." is intended to be construed as the summation or total of all outlays, exclusive of debt repayment and certain other classes of outlays, for which the Congress reasonably can expect payment to be made by the Treasury of the United States during the fiscal year in question.

". . . *receipts* . . .", ". . . *borrowing* . . ." ". . . *outlays* . . .", and ". . . *repayment of debt principal* . . ." are terms defined by or to be defined by statute and, as such, have no constitutional standing apart from these statutory definitions. The intentions of the Committee with respect to current concepts have been set forth above. At the same time, the Committee is sensitive to the likelihood that such concepts will undergo modification through time. Provided such modifications are not designed to subvert the restrictions on the Congress imposed by the amendment, but rather are designed to further those purposes, there is no intention that the meanings given here be immutable through time.

As with national income, adoption of some new concept, definition, or computational method need only be accompanied by a transition period during which the measures of receipts and outlays are derived under both the old and the new concept, definition, or computational procedures.

For example, the Committee believes that Congressional budgeting decisions with respect to loan guarantees might be enhanced by including in outlays the present value of such obligations in the fiscal year of obligation, rather than in the fiscal year of discharge. Should a consensus emgerge with respect, first, to an acceptable method for computing their present value and, second, to the desirability of their inclusion in current year outlays, the Committee would believe that such inclusion would constitute a furthering of the purposes of the amendment.

Similarly, should the Congress come to conclude that budgeting and accounting operations of the Federal Government were better conducted on an accrual basis, continuing compliance with the amendment would not necessarily be subverted by such a change; rather compliance might be enhanced.

With respect to the exclusion from receipts and outlays of those transactions involving "proprietary sales to the public", the consensus of the Committee is that such transactions represent *voluntary* relationships between the government and the people. As such, there is a presumption that these relationships reflect the individual's own determination that purchases of Federal goods and services offer to him a preferred alternative.

The Committee is cognizant of the possibility that such an exclusion is an invitation to the Congress to subvert the intentions of

the amendment through the establishment of exclusive franchise entities under Federal charter. Operating without the discipline of competition, such entities would have implicit taxing powers with which to fund programs which, absent the amendment, would have been organized within the Federal Government and would have been subject to the normal budgetary procedures of the Congress. It is the clear intention of the Committee that such subterfuges be construed as violations of the amendment.

The Committee also believes and intends that the creation of independent entities with explicit taxing powers would be an unconstitutional delegation of current Congressional authority. It would be, as well, at variance with the intentions of the amendment.

Congressional enforcement

Although the Committee has deleted language contained in previous versions of the proposed amendment expressly imposing upon the Congress the responsibility to "enforce and implement this article by appropriate legislation", it has done so only because it views such a responsibility as implicit in this article. Beyond their explicit responsibilities in the fourth sentence of section 1 to ensure that actual outlays do not exceed planned statement outlays, Members of Congress are required by Article VI generally to "support this Constitution" while the President is required by Article II, section 1, clause 7 to "preserve, protect, and defend the Constitution". It is fully expected by the Committee that the Congress and the President will effect such legislative initiatives, and devise such procedures, as will be necessary to ensure the effective implementation of the proposed constitutional amendment.

XII. ENFORCEMENT

Generally

While earlier versions of Senate Joint Resolution 13 contained language to the effect that, "The Congress shall have the power to enforce this article by appropriate legislation", this was not included in the proposed amendment because it was believed to be unnecessary language. Unlike earlier amendments to the Constitution that contained similar enforcement provisions, e.g., the 19th, 23d, 24th, and 26th Amendments, Senate Joint Resolution 13 imposes no limitation upon State actions; it limits only the authority of the national government. Thus, the Committee felt that the language of the "necessary and proper" clause in Article I, section 8 would clearly effect the same results as an independent enforcement provision in the proposed amendment. Article I, section 8, clause 17, reads as follows:

> The Congress shall have the power. . . To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof.

The Committee also believed to be unnecessary that language included in an earlier version of Senate Joint Resolution 13 which stated, "The Congress shall enforce and implement this article by

appropriate legislation." The Committee felt that implicit in the proposed amendment is a responsibility placed on Congress to enact legislation in a timely manner that will fill in the fine details of the process created by the proposed amendment and which cannot be addressed in as precise a manner by constitutional amendment as by simple statute. Congress' power in this regard will be as broad as its power under the "necessary and proper" clause to carry into effect any other authority or power granted to it by the Constitution, see *Marbury* v. *Madison* 1 Cranch, 137 (1803).

One of the elements of the process established by Senate Joint Resolution 13 that Congress is expected to implement is that specified in the final sentence of section 1. That sentence states,

> Actual outlays shall not exceed the outlays set forth in such statement.

This sentence imposes a continuing responsibility upon Congress and the President to maintain actual levels of Federal spending within constitutionally permissible levels of spending. Congress and the President are to carry out these responsibilities through both (a) the authority presently available to Congress and the President to affect and influence the fiscal process; and (b) any new authority created by Congress under its Article I enforcement authority, and otherwise consistent with the Constitution of any new means by which Congress and the President can affect and influence the fiscal process.

It is not the intent of this provision, then, to establish any new authority in the President, absent Congressional action, or to imply any re-ordering of the separation of powers balance between these branches of the national government. This provision, for example, does not invest in the President any new authority to impound appropriated funds; Congress, however, may choose to amend existing impoundment statutes (consistent with the Constitution) and establish greater authority in the President to carry out his section 1 obligations by impounding funds. It is not mandated, however, that Congress implement this or any other particular enforcement provision; it is expected only that the Congress ensure that there be some effective means by which the Congress and the President may each exercise authority to enforce this critical provision of the amendment.

In the absence of such legislation, it is still expected that the President will exercise his budget proposing authority, his veto authority, and any other authority presently available to him to carry out the mandate of the section 1 provision. The same would be expected of Congress, of course.

While there may be no sanctions expressly contained in Senate Joint Resolution 13 for the violation of any particular provision, it must first be recognized that Congress and the President are expected to act in accordance with the Constitution. Both Members of Congress and the President are obligated to take oaths of office that require compliance with the Constitution. Thus, in summary, it is the Committee's view that: (1) the language and the intent of Senate Joint Resolution 13 are clear; (2) Congress and the President are to abide by this language and intent; and (3) where neces-

sary, Congress is to enact legislation that will better enable the Congress and the President to comply with the language and intent of the amendment.

In addition, Senate Joint Resolution 13 is designed to promote its own enforcement through the political processes. By establishing a focus upon two or three critical votes each year relating to aggregate levels of taxation and deficits, in place of the present diffuse focus upon hundreds of individual spending measures, Senate Joint Resolution 13 is designed to enable the electorate to better identify those members of Congress most responsible for higher levels of spending, taxing, and deficits. To the extent that the amendment succeeds in creating a more useful flow of political information to the electorate, and this is a major objective of the amendment, it will be enforced most effectively at the polls every other November.

Role of federal courts

The question arises, however, about the role of the Federal courts—particularly the Supreme Court—in enforcing the provisions of the amendment. While several witnesses have testified before the Committee to the effect that explicit provisions ought to be incorporated into the amendment establishing judicial enforcement, others have testified strongly in support of explicit prohibitions upon such enforcement.

The Committee has chosen to say nothing in the amendment itself about this issue. By addressing it in this manner, the Committee believes that it has established the correct balance in refusing to establish constitutional sanction for the Federal courts to involve themselves in fundamental macroeconomic questions, while not undermining their equally fundamental obligation to "say what the law is," *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803).

While there are a number of Members of this Committee who are seriously concerned about the diminished exercise of judicial self-restraint in recent years, it is nevertheless the view of the Committee that traditional judicial and constitutional conceptions of justiciability, and standing, as well as the idea of what constitutes a "political question" best reserved to non-judicial branches of the government, suffice to ensure that the courts will not involve themselves, as a normal matter, in reviewing the operations of the budget process. This, certainly, is the clear intent and expectation of this Committee.

It is the view of the Committee that the role of the Federal judiciary in reviewing compliance with the proposed amendment will be sharply limited—by both the Constitution and past judicial practices—for the following reasons: (a) there would only rarely, if ever, be "standing" in any individual or group of individuals to challenge alleged breaches of the amendment; (b) even if such "standing" were conferred, the courts would normally treat issues raised under the amendment as "political questions" to be decided in the discretion of other branches of government; and (3) it is questionable that the courts would find most issues arising under the amendment to be "justiciable" in the sense of presenting the kind of "case" to which the judicial power attaches under Article III of the Constitution.

The doctrine of standing is generally regarded as constitutionally mandated by the "cases and controversies" clause of Article III. The "gist of the question of standing" is whether the party seeking relief has:

> alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illuminations of difficult constitutional questions, *Baker* v. *Carr*, 396 U.S. 186, 204 (1962).

The personal stake or personal injury in fact must be direct and specific, not a "generalized grievance" whose impact would be "plainly undifferentiated and common to all members of the public". *United States* v. *Richardson*, 418 U.S. 166, 177, 179–80 (1974). "A plaintiff must allege some particularized injury that sets him apart from the man on the street", *Richardson* supra at 194.

Under the proposed amendment, a party would have to demonstrate that he suffered a differentiated or uncommon injury as a result of Congressional violation of its constitutional duties to balance its budget, or limit spending or taxing to prescribed levels. Under most circumstances, this would be an extremely difficult demonstration, particularly since the actual breach of the amendment would normally arise from a violation of aggregate statement levels and no individual spending or revenue measure is likely to be solely responsible for that violation. In other words, even if Congress exceeded the statement limits in some respect, it would still be unlikely that the courts would or could look beyond the violation to examine which particular spending or revenue measures caused those results. This would normally preclude the showing of a differentiated injury to some party.

Federal courts increasingly, have been facing the question of standing in the context of suits brought by Members of Congress. While the Supreme Court has yet to consider the issue on its merits, the trend in lower court decisions has been to treat the legislator in a manner similar to any other citizen. As the District of Columbia Circuit Court has observed, the legislator-litigant "receives no special consideration in the standing inquiry", *Reuss* v. *Balles*, 584 F. 2d 461, 466 (1978). He is still obligated to demonstrate a particularized injury before standing will attach.

What constitutes injury still remains highly unclear. Most of the cases that have been considered by the courts have involved instances in which executive branch actions have resulted in alleged injuries to the plaintiff, see e.g. *Kennedy* v. *Sampson*, 364 F. Supp. 1075, 1078 (D.C.D.C. 1974); *Mitchell* v. *Laird*, 488 F. 2d 611 (D.C. Cir. 1973). Recent district court decisions throw serious doubt on the ability of Members of Congress to sue on the basis of allegedly wrongful actions taken by Congress itself. In *McClure* v. *Carter*, 513 F. Supp. 265 (Dist. Ct. Idaho 1981), aff'd by order, sub nom, *McClure* v. *Reagan*, 454 U.S. 1025 (1981), the Court held that a Congressional plaintiff lacked standing to challenge the appointment of a Federal judge in violation of the ineligibility clause of the Constitution (Article I, section 6, clause 2). In explaining its decision, the Court stated:

> Senator McClure had the opportunity to persuade his colleagues to vote against the confirmation and, in the conscientious performance of his duties, did just that. That he and like-minded Senators did not prevail in the Senate does not mean that the effectiveness of Senator McClure's vote was impaired. It means merely that he was on the losing side. . . . Under the Constitution, it was the duty of Congress itself, in the first instance, to determine Judge Mikva's qualifications both on the merits and on the issue of whether he was constitutionally eligible to serve as a judge. Pg. 270.

This concept of Congressional standing was clouded somewhat by *Riegle* v. *Federal Open Market Committee*, 656 F.2d 873 (D.C. Cir. 1981), which invented a two-step analysis for handling legislator suits. The courts held that separation of powers or political question concerns should not enter into the determination of legislator-plaintiff standing. But if, after standing had been properly alleged, the court believed that the "congressional plaintiff could obtain substantial relief from his fellow legislators through the enactment, repeal, or amendment of a statute, [the] court should exercise its equitable discretion to dismiss the legislator's action." Id. at 881. This standard, the court believed, "would counsel the courts to refrain from hearing cases which represent the most obvious intrusion by the judiciary into the legislative arena: challenges concerning congressional action or inaction regarding legislation." Id. Whether or not this new test will stand the test of time—and Supreme Court review—remains to be seen.

Since most breaches of the proposed amendment would normally result not from the failure of the executive branch to take appropriate actions, but from the failure of a majority of Congress itself to abide by the provisions of the amendment or to establish appropriate compliance procedures, either the traditional approach to Congressional standing or the execise of the more recently fashioned "equitable discretion" should work equally well in preventing individual or small groups of Members of Congress from obtaining inappropriate judicial remedies.

Where the alleged violation occurs on the part of the executive branch, the diminution in Congressional influence, i.e., influence on the part of Congress as a whole, must amount to a disenfranchisement, a complete nullification or withdrawal of a voting opportunity, and the Congressional plaintiff must point to a clear standard in the Constitution or in statutes by which disenfranchisement can be shown, *Goldwater* v. *Carter*, 617 F.2d 697, 702 (D.C. Cir. 1979). It is insufficient that an individual legislator's influence be merely diminished so long as recourse to the legislative process remains.

Like suits brought by citizens and congressmen, taxpayer suits would find Article III's standing requirements to pose almost insurmountable barriers. The recent Supreme Court case of *Valley Forge Christian College* v. *Americans United, Inc.*, 454, U.S. 464 (1982), clarifies the enormous obstacles to a taxpayer attempting to enforce the Amendment in court. The Court dismissed as injusticiable this taxpayer's claim that a federal donation of property to a paro-

chial school violated the First Amendment. The Court reasoned that the taxpayers had failed to satisfy the standing tests established by *Flast* v. *Cohen*, 392, U.S. 83 (1968). This result would be likely in any case brought by a taxpayer to enforce the Amendment because, as stated earlier, the Court would rarely, if ever, be able to conclusively find, given the multitude of contributing enactments and economic factors whenever the Amendment's limits come to be exceeded, that any particular "challenged enactment exceeds specific constitutional limitations." Id. at 102-103. Even if this were possible, however, the taxpayer would have to prove, in addition to the *Flast* requirements, an actual personal injury suffered by himself as a consequence of the alleged constitutional breach. See *Valley Forge* supra at 485. In *Valley Forge*, the Court could find no injury to the plaintiffs, "economic or otherwise," in the taxpayer's assertion that the Constitution had been breached by the actions in question. Since it would be difficult, if not impossible, to identify any specific congressional act as a breach of the Amendment, it would be even more difficult to show that that particular act also caused a personal injury in fact to the plaintiff. *Valley Forge* has raised the already lofty standing barriers to likely suits to judicially enforce this Amendment.

Even if these barriers were overcome, and standing were conferred upon some litigant, the "political question" doctrine would still pose a formidable obstacle to a court taking cognizance of issues arising under the proposed amendment. An observer of the doctrine has described it in these terms:

> Political questions, are ones committed to other than judicial organs of government, not in terms excluding judicial control, but with respect to issues so distinctly political in character that the courts regard it as improper to seek to exercise control, although in the exercise of the jurisdiction conferred upon it by the Constitution, the United States Supreme Court may feel called upon to determine issues equally as delicate as those which it avoids. Dodd, *Judicially Non-Enforceable Provisions of Constitutions*, 79 University of Pennsylvania Law Review 54, 85 (1931).

A "political question" has been described as one in which the courts "forego their unique and paramount function of judicial review of constitutionality." Henkin. *Is There a Political Question Doctrine?*, 85 Yale Law Journal 579, 599 (1976). The test formulated by the Supreme Court in determining the existence of a "political question" has been articulated as follows:

> Prominent on the surface of any case held to involve a political question is found to be a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of gov-

> ernment; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious departments on one question. *Baker* v. *Carr*, 369 U.S. 186 (1962).

It is the Committee's view that the clear constitutional commitment to Congress to control Federal spending (Article I, sections 8 and 9) is sufficient to ensure that the courts will exercise maximum caution in interfering with Congressional determinations under the proposed amendment. It is evident that the process of developing a budget involves precisely the kinds of determinations for which legislatures are most capable and courts least capable. The need to respond to public sentiment, the need to negotiate the demands of various and competing spending interests, and the need to make difficult policy determinations about public spending and revenue priorities are clearly factors that mitigate in behalf of legislative-branch, rather than judicial-branch, determinations. Further, it is questionable that there are adequate standards for "judicial manageability" of the class of cases most likely to arise under the proposed amendment. Any examination of aggregate spending, taxing, and deficit figures produced by Congress would run up against the problem of uncovering "differentiated" injury to some party, while any deeper, more probing analysis, necessitating judicial inquiry into the process by which such numbers were produced, almost certainly would involve the courts in matters beyond their expertise—matters the determination for which are placed clearly within a coordinate branch of government.

The Committee also doubts that much litigation arising under the proposed amendment would be "justiciable" in the sense that appropriate relief could be fashioned by the courts. In describing the components of a "case or controversy", the Supreme Court has noted that there must be:

> a real and substantial controversy admitting of specific relief through a decree of a conclusive character. *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 240 (1937).

In other words, the courts must inquire "whether or not the claim presented and the relief sought are of the type which admit of judicial resolution" *Powell* v. *McCormack*, 395 U.S. 486 (1969).

It is difficult to conceive of workable and enforceable judicial decrees or orders being issued with respect to controversies under Senate Joint Resolution 13 that would not involve the judicial branch in matters of budget policy that are clearly within the primary authority of either the legislative or executive branches of the national government. It is doubtful that the courts would relish, or that Congress would permit, the Federal Judiciary to issue the kinds of orders and decrees, and maintain the kind of continuing oversight to ensure the effectiveness of such orders and decrees, that would be necessary in matters of budget policy in order to ensure compliance with the proposed amendment.

Because balanced budget requirements in State constitutions vary widely, it is difficult to draw any final conclusion from the experience of state courts with lawsuits requesting judicial enforcement. The infrequent decisions indicate, however, the reluctance of

the state courts to become involved in decisions inappropriate for judicial decisionmaking. In New York, for instance, the court of appeals refused to review legislative enactments for conformity with the constitutional balanced budget mandate. *Wein* v. *Carey*, 362 N.E. 2d 587 (1977). In Maryland, the state's highest court declared moot a case challenging legislative actions as inconsistent with the balanced budget requirement because the fiscal year had expired before the case reached final resolution. This court refused to invoke the state's exception to mootness for issues of public importance. *Bishop* v. *Governor*, 380 A. 2d 220 (1977). The New Jersey Supreme Court admitted that it lacks power to order or enjoin the appropriation of funds to enforce the balanced budget rule, but did retain the option of offering advisory opinions on legislative action—an option barred in the federal courts by Article III. *Camden* v. *Byrne*, 411 A. 2d 462 (1980). These few cases are indicative of the difficulties experienced by courts in attempting to administer any remedy for a legislative function—allocation of funds—committed generally by state constitutions to other branches of government. Thus, these cases reinforce the Committee's understanding and intent that this Amendment will be self-enforcing.

In summary then, while the Committee has chosen consciously not to prohibit judicial review altogether of "cases or controversies" arising in the context of the proposed amendment—in the belief that the most serious and unambiguous violations of its provisions ought to be subject to external check—it nevertheless is expected that the amendment will be largely self-enforcing and self-monitoring. First, Congress and the President each are expected to establish appropriate procedures for complying with the amendment; second, Congress and the President each are expected to monitor the actions of the other branch and, to the limits of their authority, enforce the provisions of the amendment against that branch; and finally, the public is expected, and will be in an enhanced position, to monitor the actions of both of these branches of government and, where they fall short of complying with the provisions of the amendment to enforce it through electoral means. Only as a final resort, and only under the most compelling circumstances (as, for example, when the practices of either the Congress or the Executive undermine the ability of the amendment to be self-enforcing), is there anticipated to be a significant role for the judicial branch.

XIII. STATE EXPERIENCE

In contrast to past Federal fiscal policies, continued deficit spending by the States has been a rarity. Perennially, more States incur general surpluses than incur general deficits. The vast majority of the States are prohibited, by constitution, from spending more than available revenues. A growing number of States, in addition, have imposed constitutional restrictions upon their own ability to spend or tax in excess of prescribed levels.

In comparing Federal and State fiscal policies, there are widely varying budgeting, accounting, and reporting practices. Also, by virtue of its access to the monetary printing press, there are differ-

ent fiscal options available to the Federal government than are available to State governments. In addition, there are different functions to be served by the fiscal policies of the Federal government than by those of the States. Despite an appreciation of these differences, the Committee believes that the ability of the States to operate within their constitutional constraints has been instructive. Such constraints have proven to be workable and have not inhibited significantly the ability of State governments to perform their most widely accepted functions. Because it has been required, State legislatures have learned to operate effectively within the external limitations of their constitutions, many of which are significantly more restrictive than S.J. Res. 13.

By the end of 1984, 44 States had constitutional provisions limiting their ability to incur budget deficits. An additional eight States had enacted statutory constraints to this effect. These limitations fall into a number of broad categories. Some would constrain the Governor by requiring the submission of a balanced budget. For example, California's Constitution reads in part:

> Within the first 10 days of each calendar year, the Governor shall submit to the legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenue, he shall recommend the sources from which the additional revenues should be provided. (Article 4, section 12a)

In addition, the California Constitution requires that proposals to incur state debt be submitted to the electorate for approval.

Other States would impose direct constitutional limitations upon the States legislature. For example, Louisiana's Constitution reads as follows:

> Total appropriations by the legislature for any fiscal year shall not exceed anticipated state revenues for that fiscal year. (Article VII, section 10(b))

Other States would combine restrictions upon the Governor and the State legislatures. For example, Maryland's Constitution reads as follows:

> The budget and the budget bill as submitted by the Governor to the General Assembly shall have a figure for the total of all proposed appropriations and a figure for the total of all estimated revenues available to pay the appropriations, and the figure for total estimated revenues. Neither the Governor in submitting an amendment or supplement to the budget bill nor the General Assembly in amending the budget bill shall thereby cause the figure for total proposed appropriations to exceed the figure for total estimated revenues, including any revisions, and in the budget bill as enacted the figure for total estimated revenues shall aways equal or exceed the figure for total appropriations. (Article III, section 52(5a))

Finally, some States would allow the contraction of extremely small amounts of debt which, in practice, effectively prohibits the use of such debt to finance significant expenditure items. For example, Iowa's Constitution reads:

> The State may contract debts to supply casual deficits or failures in revenues or to meet expenses not otherwise provided; but the contingent . . . shall never exceed the sum of two hundred and fifty thousand dollars. (Article VII, section 2)

Table 5 summarizes existing constitutional and statutory restrictions upon State deficits.

TABLE 5.—*Balanced budget requirements*

(Is requirement for balanced budget statutory(S) or constitutional(C)? What is the nature of requirement?)

States	(points) (1) Statutory	(2) Constitutional	(1) Governor Only has to Submit a Balanced Budget	(2) Legislature Only has to Pass a Balanced Budget	(4) May Carry over a Deficit but Must be Corrected in Next Fiscal Year	(5) State Cannot Carry Over a Deficit Into Next Biennium	(6) State Cannot Carry Over a Deficit Into Next Fiscal Year	Degree of Stringency Scale (high=10; low=1)
New England								
Connecticut	X		S*	S	S			5
Maine	X						S	9
Massachusetts		X	C					1
New Hampshire	X		S					2
Rhode Island		X					C	10
Vermont				No Requirement*				0
Mideast								
Delaware		X					C*	10
Maryland		X	C	C	C			6
New Jersey		X					C	10
New York		X	C					1
Pennsylvania	X	X	S,C	S	S,C			6
Great Lakes								
Illinois		X	C	C				4
Indiana		X					C*	10
Michigan		X			C			5
Ohio	X	X					S,C	10
Wisconsin		X			C*			6
Plains								
Iowa		X					C	10
Kansas		X					C	10
Minnesota	X	X				S,C		8
Missouri		X					C	10
Nebraska		X					C	10
North Dakota		X				C		8
South Dakota	X	X					S,C	10
Southeast								
Alabama		X					C	10
Arkansas	X						S	9
Florida	X	X					S,C	10
Georgia		X					C	10
Kentucky	X	X				C*	S	10
Louisiana		X		C				4
Mississippi	X						S	9
North Carolina	X	X					S,C	10
South Carolina	X	X			S,C		C	10
Tennessee		X			C		C	10
Virginia	X	X				S,C		8
West Virginia		X					C*	10
Southwest								
Arizona		X					C	10
New Mexico		X					C	10
Oklahoma		X					C	10
Texas		X		C		C		8
Rocky Mountain								
Colorado		X					C	10
Idaho		X					C	10
Montana		X		C		C	C	10
Utah	X	X					S,C	10
Wyoming		X				C		8
Far West								
California		X	C		C*			6
Nevada	X	X	S	C				4
Oregon	X	X	S			C		8
Washington	X	X				S,C		8
Alaska	X	X	S		C			6
Hawaii	X	X	S,C			C	C	10

Source: ACIR staff compilation based on 1984 surveys of executive and legislative fiscal directors, and Limitations on State Deficits, Council of State Governments, Lexington, Kentucky, May 1976.

*See notes on next page.

TABLE 5.—*Balanced budget requirements* (Continued)

NOTE: The following states have a balanced budget relating to constitutional debt limitations (debt limit in parenthesis): Alaska ($350,000), Arizona ($350,000), Colorado ($100,000), Iowa ($250,000), Kentucky ($500,000), Missouri ($100,000), Nebraska ($100,000), New Jersey (1% of appropriations), New Mexico ($200,000), Ohio ($150,000), Oklahoma ($500,000), South Dakota ($100,000), Texas ($200,000), and Utah (1.5% of taxable property value).

CALIFORNIA: Article XVI, Sec. 1, requires that the legislature shall not, in any manner, create a debt in excess of $300,000 without a vote of the people. This section has been interpreted to allow a carry-over deficit, as long as the deficit is repaid within "a short period of time."

CONNECTICUT: If revenues are deficient by 5% due to lower than projected revenue collections after the budget has been passed, the General Assembly must approve expenditure cuts. (Statute 4-85; Subsection C)

DELAWARE: "No appropriation, supplemental appropriation or budget act shall cause the aggregate State General Fund appropriations enacted for any given fiscal year to exceed 98 percent of the estimated State General Fund revenue for such fiscal year from all sources, including estimated unencumbered funds remaining at the end of the previous fiscal year..." (Const. Art. VIII, Sec. 6) The state provides for this 2 Percent Fund and a 5 percent Budget Reserve Account to be used for an unanticipated deficit. There are no provisions in the Constitution that call for specific action if a projected deficit exceeds 7 percent of general fund revenues.

INDIANA: "No law shall authorize any debt to be contracted, on behalf of the state, except in the following cases: To meet casual deficits in the revenue..." (Const. Art. 10, Sec. 5)

KENTUCKY: Agencies must set aside 2-1/2% of their budget each year in the event of a revenue shortfall (KRS 48.120).

VERMONT: Governor is statutorily required to submit recommendation to alleviate deficits from previous years in his or her budget request. There is no requirement that the governor must submit a balanced budget.

WEST VIRGINIA: "No debt shall be contracted by this state except to meet casual deficits in the revenue..." (Const. Art. X, Sec.4)

WISCONSIN: Section S20.004 of Wisconsin statutes requires that no bill may be passed if the bill will cause the General Fund balances at the end of the biennium to be less than one percent of total General Fund appropriation.

U.S. Advisory Commission on Intergovernmental Relations

In addition, by mid-1985, ten States had adopted constitutional limitations upon State expenditures and revenue. An additional twelve States had adopted statutory restrictions to this effect. These limitations are summarized in Table 6.

One recent study concluded that such limitations have had a "constraining effect on the proclivity of public sector spending at the State and local level". Uhimchuk, *Constitutional Tax Limits at the State Level* (1981).

TABLE 6.—*Description of state tax and expenditure limits*

State, Year of Adoption, Type of Limit, Method of Approval	Limit Applies to:	The Limit is:	Provisions for Waiver:	Provisions in the Case of Transfer of Responsibility for Government Programs	Treatment of Surpluses:
ALASKA* 1982 Constitutional Expenditure Legislative Referendum *Automatic vote for reconsideration of limit is set for 1986.	State appropriations	Appropriations shall not exceed $2.5 billion by more than the cumulative percentage change in population and inflation since 7/1/81.	Limit may be exceeded for capital projects or appropriations to the permanent fund if the bill is (1) approved by the governor or 3/4 of the legislature and (2) approved by voters	None	
ARIZONA 1978 Constitutional Expenditure Legislative Referendum	Appropriations of state tax revenues	Appropriations of state tax revenues shall not exceed 7% of state personal income.	Requires 2/3 approval of each house of the legislature on specific additional appropriation.	Legislature shall provide for adjustments to limit if court order or legislative enactment transfers responsibility between state and local governments or between federal and state govts.	No provision
CALIFORNIA 1979 Constitutional Expenditure Citizen Initiative	Appropriations of state tax revenues	Yearly growth in appropriations limit shall not exceed percentage increase in population and inflation.	In the event of an emergency the appropriation limit may be exceeded provided increased expenditures are compensated for by reduced expenditures over 3 following years. Alternatively, the limit may be changed by voters but the change is operative for only 4 years.	1) The appropriations limit shall be altered if program responsibility is transferred from one government entity to another, from govt. to private entity or from funding through general revenues to funding through special revenues. 2) The state shall provide the funding when it requires local govt. to provide a program. 3) Appropriations required for purpose of complying with federal requirements are not under limit.	Surplus revenues shall be returned by revision of tax rates or fee schedules within next two fiscal years.
COLORADO 1977 Statutory Expenditure Legislative Vote	State general fund appropriations	Yearly growth of state general fund appropriations shall not exceed 7%.	Statute may be amended at any time by majority vote of legislature.	None	General fund revenues in excess of limit and after retention of unrestricted general fund year end balances of 6% of revenues shall be used for tax relief, capital construction, highway expenditures and water projects.
HAWAII 1978 Constitutional Expenditure Constitutional Convention Referendum	State general fund appropriations	Rate of growth of general fund appropriations shall not exceed average rate of growth of state personal income for 3 previous years.	Requires 2/3 approval of each house of the legislature on specific additional appropriation.	State shall share in cost of any new program or service increase required of local governments by the legislature.	If state general fund balance in each of two succeeding years exceeds 5% of general fund revenues, legislature shall provide for tax refund.

(Continued on next page)

TABLE 6.—*Description of state tax and expenditure limits*
(Continued)

State, Year of Adoption, Type of Limit, Method of Approval	Limit Applies to:	The Limit is:	Provisions for Waiver:	Provisions in the Case of Transfer of Responsibility for Government Programs	Treatment of Surpluses:
IDAHO 1980 Statutory Expenditure Legislative Vote	State general fund appropriations	Appropriations shall not exceed 5-1/3% of state personal income.	Requires 2/3 approval of each house of the legislature on specific additional appropriation	Adjustments to limit shall be made if court order or legislative enactment transfers responsibility between state and local governments or between federal and state governments.	No provision
LOUISIANA 1979 Statutory Revenue Legislative Vote	State tax revenue	Tax revenue shall not exceed FY 78-79 tax rev. 1977 state pers. inc. multiplied by last yr.'s state personal income.	Statute may be amended at any time by majority of legislature.	None	State tax revenue in excess of limit shall be deposited in the Tax Surplus Fund; appropriations from that fund may be made for paying tax refunds.
MICHIGAN 1978 Constitutional Revenue Citizen Initiative	State revenue	Revenue shall not exceed FY 78-79 state rev. 1977 state pers. inc. multiplied by the greater of state personal income in prior calendar year or average state personal income over previous 3 calendar years.	Government must first specify an emergency, then the legislature must concur by 2/3 vote in each house.	1) Limit may be adjusted if program responsibility is transferred from one level of govt. to another. 2) State is prohibited from reducing current proportion of local services financed through state aid. 3) No new program shall be required of local govts. unless cost is paid by state. 4) The proportion of total state spending paid to all units of local government as a group shall not be reduced below proportion for FY 78-79.	Revenues exceeding limit by 1% or more shall be used for tax refunds set in proportion to income tax liability. Excess less than 1% may be transferred to the State Budget Stabilization Fund.
MISSOURI 1980 Constitutional Revenue Citizen Initiative	State revenue	Revenue shall not exceed FY 80-81 state rev. 1979 state pers. inc. multiplied by the greater of state personal income in prior calendar year or average state personal income over previous 3 calendar years.	Governor must first specify an emergency, then the legislature must concur by 2/3 vote in each house.	1) Limit may be adjusted if program responsibility is transferred from one level of govt. to another. 2) State is prohibited from reducing current proportion of local services financed through state aid. 3) No new program shall be required of local governments unless cost is paid by state.	Revenues exceeding limit by 1% or more shall be refunded pro rata based on income tax liability. Excess less than 1% shall be transferred to the general revenue fund.

(Continued on next page)

TABLE 6.—*Description of state tax and expenditure limits*
(Continued)

State, Year of Adoption, Type of Limit, Method of Approval	Limit Applies to:	The Limit is:	Provisions for Waiver:	Provisions in the Case of Transfer of Responsibility for Government Programs	Treatment of Surpluses:
MONTANA 1981 Statutory Expenditure Legislative Vote	State appropriations	State biennial appropriations shall not exceed state appropriations for the preceding biennium plus the product of preceding biennial appropriations and the growth percentage. The growth percentage is the percentage difference between average state personal income for the 3 calendar years immediately preceding the next biennium and the average state personal income for the 3 calendar years immediately preceding the current biennium.	Governor must declare an emergency. Legislature must then approve specific additional expenditures by 2/3 vote of each house.	None	No provision
NEVADA 1979 Statutory Expenditure NON-BINDING Legislative Vote	Governor's proposed general fund expenditures	Proposed biennial expenditures authorized for the 1975-76 biennium multiplied by [1 + percentage population change since 7/1/74] multiplied by [1 + percentage inflation]	Not applicable because nonbinding.	None	No provision
NEW JERSEY* 1976 Statutory Expenditure Legislative Vote *Expired 1983	State appropriations	Fiscal year appropriations shall not exceed FY state per cap. inc. prior FY st. per cap.in. multiplied by appropriations in prior FY.	Must be approved by majority of voters in state referendum at a general election prior to fiscal year in which limit is to be exceeded.	Adjustment to limit shall be made if program responsibility is transferred between state and local governments.	No provision
OREGON 1979 Statutory Expenditure Legislative Vote	State general fund appropriations	The rate of growth of appropriations in each biennium shall not exceed rate of growth of state personal income in 2 preceding calendar years.	Statute may be amended at any time by majority of legislature.	Adjustment to limit shall be made if program funding is transferred from general fund to non-general fund sources.	Revenue exceeding limit by 2% or more shall be used for tax refunds proportional to income tax liability.
RHODE ISLAND 1977 Statutory Expenditure NON-BINDING Legislative Vote	Governor's general fund appropriation request	Yearly growth in Governor's general fund appropriation request shall not exceed 6%.	Not applicable because nonbinding.	None	No provision

TABLE 6.—*Description of state tax and expenditure limits*
(Continued)

State, Year of Adoption, Type of Limit, Method of Approval	Limit Applies to:	The Limit is:	Provisions for Waiver:	Provisions in the Case of Transfer of Responsibility for Government Programs	Treatment of Surpluses:
SOUTH CAROLINA 1980, 1984 Constitutional Expenditure Legislative Referendum	State appropriations	Yearly growth in state appropriations shall not exceed average growth of personal income over 3 preceding yrs. or 9.5% of total state personal income, whichever is greater. Also the number of state employees is tied to state population	Limit may be exceeded for one year by a 2/3s vote of the legislature if it first declares a financial emergency. Also, every 5 years the legislature can review the composition of the limit.	None	Excess revenues may be spent to match federal programs, for debt purposes, tax relief, or transferred to reserve fund.
TENNESSEE 1978 Constitutional Expenditure Constitutional Convention Referendum	Appropriations of state tax revenues	Growth in state appropriations shall not exceed growth in state personal income.	Specific additional amount may be approved by majority vote of the legislature.	State must share in cost if it increases expenditure requirements of local governments.	No provision
TEXAS 1978 Constitutional Expenditure Legislative Referendum	Appropriations of state tax revenues	Growth of biennial appropriations shall not exceed rate of growth of state personal income.	Specific additional amount may be approved by majority vote of the legislature if it first adopts a resolution that an emergency exists.	None	No provision
UTAH 1979 Statutory Expenditure NEVER IMPLEMENTED Legislative Vote	State appropriations	Growth in appropriations may not exceed 85% of the increase in state personal income.	Limit may be exceeded by 2/3 vote of legislature if fiscal emergency is declared by legislature and legislature follows required procedures for publicizing its intent and holding public hearing.	1) Limit shall be adjusted if program responsibility is transferred between state and local govts. or from the federal govt. to the state. 2) Limit shall be decreased if funding source moved from sources covered under limit to sources exempt from limit. Revenue from exempt sources that is moved to non-exempt accounts shall come under the limit.	Revenue in excess of limit up to 2% of appropriations may be kept in unappropriated state funds balance; other excess revenue shall be rebated to taxpayers.
WASHINGTON 1979 Statutory Revenue Citizen Initiative	State tax revenue	Growth in tax revenues shall not exceed average rate of growth of state personal income over preceding 3 years.	Emergency must be declared by 2/3 vote of legislature then legislature must approve specific additional appropriations by 2/3 vote.	1) Limit shall be adjusted if program responsibility is transferred between state and local govts. or between state and federal govt. 2) State must reimburse local govts. for increased cost if legislature imposes program responsibility on local govts.	Excess revenue becomes part of state tax revenue for next fiscal year.

Source: ACIR staff compilation from 1984 ACIR State Fiscal Survey of legislative and executive budget officers and from state tax and expenditure limit legislation.

XIV. PUBLIC ATTITUDES ON A BALANCED BUDGET AMENDMENT

Public opinion polls have consistently demonstrated strong public support for the idea of a balanced budget constitutional amendment. Polls dating back to the 1930's have persistently shown a public sympathetic to the idea of placing permanent limitations upon the ability of Congress to spend in excess of available revenues. The following is a sampling of some polls taken on this issue:

TABLE 7.—SUPPORT FOR CONSTITUTIONAL AMENDMENT

[In percent]

	Favor	Oppose	No opinion
"A proposed amendment to the Constitution would require Congress to approve a balanced federal budget each year. Government spending would have to be limited to no more than expected revenues, unless a three-fifths majority of Congress voted to spend more than expected revenues. Would you favor or oppose this amendment to the Constitution?" (Asked only of those persons in the samples who said they had "heard or read about the proposal for a constitutional amendment which would require the federal government to balance the national budget each year."):			
June 1983	71	21	8
August 1982	63	23	14
May 1982	74	17	9
September 1981	73	19	8
April 1981	70	22	8
March 1980	67	13	20
"Would you favor or oppose a constitutional amendment that would require Congress to balance the federal budget each year—that is, keep taxes and expenditures in balance?":			
February 1979	78	12	10
June 1978	81	11	8
March 1976	78	13	9

Source: Gallup Polls based upon personal interviews with national samples of around 1,500 adults, 18 years of age and older.

Further, as a recent New York Times-CBS Poll has concluded "a proposed budget-balancing amendment had a remarkably uniform level of support across the country and demographically." This seems to be true of each of these polls. Over 65 percent of those identifying themselves as Democrats, and Republicans, from all sections of the country, favored such an amendment.

XV. SOME QUESTIONS CONCERNING SENATE JOINT RESOLUTION 13

1. How does Senate Joint Resolution 13 work?

The amendment requires, first, the adoption of a "statement" or budget for each fiscal year in which total Federal outlays are no greater than total Federal receipts and mandates that actual outlays be no greater than statement or budget outlays. Second, the amendment requires that total receipts grow at a rate no greater than the growth of the national economy. Thus, actual outlays cannot exceed statement outlays which cannot exceed statement receipts which cannot grow faster than the economy.

2. Are the issues addressed by Senate Joint Resolution 13 suitable for the Constitution?

Yes. The proposed amendment seeks to re-establish constitutional limitations upon Federal spending and deficit practices that ex-

isted in earlier years through an array of formal and informal constitutional provisions and which have been eroded over the course of recent years. Specifically, Senate Joint Resolution 13 addresses a serious spending bias in the present political process because Members of Congress do not have to cast votes in behalf of new taxes in order to accommodate new spending programs. Rather than having to cast such politically disadvantageous votes, they may either resort to increased levels of deficit spending or allow the tax system, through "bracket creep", to produce annual, automatic tax increases. This spending bias has created severe economic and political difficulties that are fully deserving of being addressed by the Constitution.

3. How does Senate Joint Resolution 13 address this spending bias?

The proposed amendment overcomes this bias by eliminating the two elements in our political system responsible for the bias: (a) unlimited access to deficit spending; and (b) availability of automatic tax increases. Section 1 would reestablish the balanced budget as a fiscal norm, while section 2 would require Members of Congress to vote to increase taxes before the Federal sector could ever consume a greater share of the national economy. Senate Joint Resolution 13, by doing this, would restore the traditional linkage between spending and taxing and ensure that votes to increase spending would be matched by votes to increase taxes.

4. Why does Senate Joint Resolution 13 provide for different qualified majorities in sections 1 and 2?

Section 1 addresses the element of the spending bias related to the Congress' unlimited access to deficit spending. An extraordinary majority—in this case a three-fifths majority—is necessary to overcome this element of the bias. Section 2 addresses the second element of the spending bias related to the availability of automatic tax increases. An extraordinary majority was not essential in this section in order to overcome this bias, but the requirement that Congress go on record before tax increases were imposed upon the people. The requirement of a constitutional majority in section 2, i.e. a majority of the entire membership of each House of Congress, is designed to ensure that any tax increase vote takes place under conditions of maximum political visibility.

5. Shouldn't Senate Joint Resolution 13 be tried as a statute before being placed in the Constitution?

Previous efforts to impose fiscal responsibility upon Congress through statutes have not been successful because they do not address the fundamental spending bias within our political system. Congress, for example, was required under the law to balance its budget for fiscal year 1981 (P.L. 96-389, section 3). Not only can statutes always be repealed or ignored by a simple majority vote of Congress, but they do not address the underlying institutional defect or bias that makes it difficult for Congress to pursue fiscally responsible policies. To achieve this, some external constraint upon Congress is necessary.

6. Will Senate Joint Resolution 13 preclude Congress from being responsive to economic conditions?

No. While the proposed amendment establishes a fiscal norm of balanced budgets and stable levels of outlays and receipts, these norms can be overcome by qualified majorities of Congress. If the slightly higher majorities for overcoming these norms cannot be obtained, there is reason to question whether or not a consensus exists on how best to respond to changing economic conditions.

7. Haven't economists criticized the notion of a balanced budget amendment?

Some have. However, their criticism has been directed largely toward amendments which mandate balanced budgets whatever the current economic conditions. Senate Joint Resolution 13 avoids these criticisms in two ways. First, the amendment only establishes the fiscal norm of a *planned* balanced budget, i.e. one in which Congress can reasonably expect outlays not to exceed receipts. Actual outlays, however, may exceed actual receipts—a situation which might arise if the economy tumbled into a recession and actual receipts fell below the receipts expected at the time the planned budget was adopted. Second, the Congress *can* adopt a deficit budget if a qualified majority of each House of Congress deems that conditions warrant a deficit.

8. Why does Senate Joint Resolution 13 link receipts to national income in section 2? Isn't the need for Federal receipts and outlays independent of the level of national income?

No. Except for periods of national emergency, Federal government spending is but one claimant on the nation's income. Excessive government spending means too little spending on other things, e.g., personal consumption, future investment, State and local governments. By linking maximum growth of Federal revenues and spending to the growth of national income, the amendment stablizes the relationship between the Federal sector and the economy that supports that sector.

9. Doesn't the lag between growth of current receipts and spending and the growth of national income during the previous calendar year undermine the stability of the Federal sector?

No. In an economy which cycles between prosperity and recession, the approximately 21 month lag between fiscal year Federal taxing and spending and calendar year national income serves to moderate the business cycle. As the economy booms, Federal spending would be restrained by the slower pre-boom growth of national income—thus moderating what many see as the inflationary propensities of an over-employed economy. As the economy cycles toward recession, Federal spending would be supported by the faster pre-recession growth of national income—thus accommodating a Congress which desires to add an element of "stimulation" to the economy.

10. What is national income?

As used in the proposed amendment, "national income" is a generic term for the annual output of the economy. The Congress may choose to rely on any of several measures of economic performance, including Gross National Product, Net National Product, National Income, Personal Income, etc. What is important is that this economic indicator be used consistently from year to year, or that some transition period accompany the substitution of one indicator for another.

11. Why doesn't Senate Joint Resolution 13 provide for the retirement of the accumulated Federal debt?

By establishing the norm of a balanced budget and thereby limiting future increases in the size of the national debt, the proposed amendment will lead to an increasingly less burdensome debt as the economy continues to grow. Beyond that, nothing in Senate Joint Resolution 13 prohibits Congress from paying off its present debt as it chooses. The Committee did not choose, however, to mandate a surplus budget which would have been necessary in order to provide for the regular repayment of debt.

12. Will Senate Joint Resolution 13 affect the ability of Congress to finance war expenditures through deficit spending?

No. (1) Section 3 authorizes Congress to deficit spend in the event of a declaration of war; (2) Congress by a three-fifths vote can choose to deficit spend for military purposes; (3) Congress by a majority of whole can choose to increase levels of taxes (and hence levels of spending) for military purposes; and (4) Congress can always choose to rearrange priorities within its budget limits to better accommodate military spending. If none of these situations obtain, it might be difficult to describe a particular situation as involving a national "emergency".

13. Won't Senate Joint Resolution 13 prevent a prompt response to an emergency arising when the Congress is out of session?

No, at least no more so than under the present Constitution. No administration can expend monies that the Congress has not appropriated. If, prior to its recess or adjournment, the Congress has not provided for emergency funding, only a recall of Congress into session could deal with this situation. This is neither more nor less true under the amendment.

14. Will Senate Joint Resolution 13 preclude Congress from meeting the genuine needs of the Amerian people?

No. The vast majority of the voters have expressed strong interest in reduced levels of overall spending and taxing. In any event, if the fiscal norm established in section 2 is inadequate to meet these genuine needs, a majority of the membership of each House of Congress may vote at any time to set higher spending levels—so long as it is also prepared to vote for higher taxes to finance such spending.

15. Can the Congress avoid the restraints of Senate Joint Resolution 13 by spending "off-budget"?

No. The proposed amendment makes no distinction between on-budget and off-budget spending. The term "outlay" is defined in this report to include both sorts of expenditures

16. Can Congress avoid the restraints of Senate Joint Resolution 13 by guaranteeing loans?

Temporarily. Since loan guarantees do not represent outlays in the year in which the loans are guaranteed, the proposed amendment does not preclude the Congress from authorizing such agreements. However, to the extent that a guaranteed loan is defaulted by the borrower, the outlays will come under the terms of the amendment in the year of the default.

17. Can Congress avoid the restraints of Senate Joint Resolution 13 by imposing increased costs upon the private sector through increased rules and regulations?

Yes. Congressional use of regulation has always been an option to explict taxing and spending, and will remain one under Senate Joint Resolution 13. As Professor James Buchanan has said about this point however, "to fix the fence in one spot does not ensure that the cattle will not get out of the pasture at some other place. But it does mean that the cattle are less likely to get out than before the fence in the one spot was fixed."

18. With economic conditions so uncertain, how can Congress estimate its maximum available receipts?

Under the current law, the budgetary process is a continuing one up until the beginning of each fiscal year. When Congress receives the annual Presidential budget message in January, it will have available the first national income growth estimates of the Commerce Department. By February and March, the second and third preliminary estimates will be available. In July, well before the October beginning of the fiscal year, the Commerce Department publishes its first formal estimates of national income growth. Typically, these are extremely close to the final growth data available two years later. It should be noted that the absolute levels of national income are not an issue in the proposed amendment, only the rate of growth in the indicator.

19. How is Senate Joint Resolution 13 to be enforced?

The proposed amendment is designed to be enforced primarily through the political process. As one witness has observed of the amendment, "it would increase the flow of economic information in the political marketplace." Rather than voters having to wade through hundreds of votes cast by their Senators and Representatives each year in order to determine their views on spending and taxing, they would be able to analyze only a small number of key votes. Further, Members of Congress would be more directly accountable for their decisions since they would neither be able tc defer the costs of new spending programs—through deficit financing—nor totally avoid responsibility for imposing these costs—

through automatic tax increases. In addition, Senate Joint Resolution 13 attempts to draw a balance so that federal courts will be in a position to review the most serious and unambiguous violations of the amendment, but not in a position to review basic day to day fiscal decisions better left to Congress and the Executive. Finally, it is expected that Members of Congress themselves and the Executive branch will seek to abide by the text and the spirit of the supreme law of the land.

XVI. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the Committee has concluded that Senate Joint Resolution 13 will have no regulatory impact.

XVII. CHANGES IN EXISTING LAW

In compliance with paragraph 12, rule XXVI of the Standing Rules of the Senate, Senate Joint Resolution 13 does not change existing United States Code but instead adds a new amendment to the United States Constitution.

XVIII. COST OF THE LEGISLATION

In accordance with paragraph 11(a), Rule XXVI, Standing Rules of the Senate, the Committee offers the following report of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 1985.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S.J. Res. 13, a joint resolution proposing an amendment to the Constitution relating to federal budget procedures, as ordered reported by the Senate Committee on the Judiciary, July 11, 1985.

S.J. Res. 13 proposes an amendment to the Constitution that would require the Congress, prior to each fiscal year, to adopt a statement of receipts and outlays for that year in which total outlays are not greater than total receipts. Such statement may provide for a budget deficit if three-fifths of the total membership of both Houses of the Congress vote in favor. For any fiscal year, total receipts set forth in the statement may not increase by a rate greater than the rate of increase in national income for the year prior to such fical year, unless a majority of both Houses of the Congress has passed a bill approving the additional receipts and such bill has become law. The amendment also states that these provisions may be waived for any fiscal year in which a declaration of war is in effect, and that the amendment shall take effect for the second fiscal year beginning after the article is ratified by three-fourths of the states.

The budgetary impact of this amendment is very uncertain, because it depends on when it takes effect and the extent to which the Congress would exercise the discretion provided by the amend-

ment to approve larger revenue increases and/or budget deficits. The earliest the amendment could take effect would be for fiscal year 1988, if it were approved by the 99th Congress and ratified by the requisite number of States by September 30, 1986.

Under the policies of the First Concurrent Resolution on the Budget—Fiscal Year 1986, CBO projects that the deficit in fiscal year 1988 will be about 3 percent of the Gross National Product. If the amendment takes effect and if the limit on revenue growth is maintained by the Congress, then total Federal revenues would have to be reduced in fiscal year 1988 by about 1.5 percent from budget resolution levels so as not to exceed the allowed rate of increase in revenues, based on CBO's current economic assumptions. In order to balance the budget, the Congress would then need to reduce outlays. In fiscal year 1988, total Federal outlays would need to be reduced by about 14 percent from the policies of the congressional budget resolution so as not to exceed revenues.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner, Director).

XIX. CONCLUSION

For the foregoing reasons, the Committee on the Judiciary recommends the enactment of the subject resolution proposing an amendment to the United States Constitution.

[Attachment]

THE BALANCED BUDGET AMENDMENT—PROFESSOR MILTON FRIEDMAN, NOBEL PRIZE WINNER IN ECONOMICS

(The Atlantic Monthly—February 1983)

Our elected representatives in Congress have been voting larger expenditures year after year—larger not only in dollars but as a fraction of the national income. Tax revenue has been rising as well, but nothing like so rapidly. As a result, deficits have grown and grown.

At the same time, the public has demonstrated increasing resistance to higher spending, higher taxes, and higher deficits. Every survey of public opinion shows a large majority that believes that government is spending too much money, and that the government budget should be balanced.

How is it that a government of the majority produces results that the majority opposes?

The paradox reflects a defect in our political structure. We are ruled by a majority—but it is a majority composed of a coalition of minorities representing special interests. A particular minority may lose more from programs benefiting other minorities than it gains from programs benefiting itself. It might be willing to give up its own programs as part of a package deal eliminating all programs—but, currently, there is no way it can express that preference.

Similarly, it is not in the interest of a legislator to vote against a particular appropriation bill if that vote would create strong enemies while a vote in its favor would alienate few supporters. That is why simply electing the right people is not a solution. Each of us will be favorably inclined toward a legislator who has voted for a bill that confers a large benefit on us, as we perceive it. Yet who among us will oppose a legislator because he has voted for a measure that, while requiring a large expenditure, will increase the taxes on each of us by a few cents or a few dollars? When we are among the few who benefit, it pays us to keep track of the vote. When we are among the many who bear the cost, it does not pay us even to read about it.

The result is a major defect in the legislative procedure whereby a budget is enacted; each measure is considered separately, and the final budget is the sum of the separate items, limited by no effective, overriding total. That defect will not be remedied by Congress itself—as the failure of one attempt after another at reforming the budget process has demonstrated. It simply is not in the self-interest of legislators to remedy it—at least not as they have perceived their self-interest.

Dissatisfaction with ever-increasing spending and taxes first took the form of pressure on legislators to discipline themselves. When it became clear that they could not or would not do so, the dissatisfaction took the form of a drive for constitutional amendments at both the state and the federal levels. The drive captured national attention when Proposition 13, reducing property taxes, was passed in California; it has held public attention since, scoring successes in state after state. The constitutional route remains the only one by which the general interest of the public can be expressed, by which package deals, as it were, can be realized.

Two national organizations have led this drive: the National Tax Limitation Committee (NTLC), founded in 1975 as a single-issue, nonpartisan organization to serve as a clearinghouse for information on attempts to limit taxes at a local, state, or federal level, and to assist such attempts; and the National Taxpayers Union (NTU), which led the drive to persuade state legislatures to pass resolutions calling for a constitutional convention to enact an amendment requiring the government to balance its budget. Thirty-one states have already passed resolutions calling for a convention. If three more pass similar resolutions, the Constitution requires Congress to call such a convention—a major reason Congress has been active in producing its own amendment.

The amendment that was passed by the Senate last August 4, by a vote of 69 to 31 (two more than the two thirds required for approval of a constitutional amendment), had its origin in 1973 in a California proposition that failed at the time but passed in 1979 in improved form (not Proportion 13). A drafting committee organized by the NTLC produced a draft amendment applicable to the federal government in late 1978. The NTU contributed its own version. The Senate Judiciary Committee approved a final version on May 19, 1981, after lengthy hearings and with the cooperation of all the major contributors to the earlier work. In my opinion, the committee's final version was better than any earlier draft. That version was adopted by the Senate except for the addition of section 6, pro-

posed by Senator William Armstrong, of Colorado, a Republican. Approval by the Senate, like the sponsorship of the amendment, was bipartisan; forty-seven Republicans, twenty-one Democrats, and one Independent voted for the amendment.

The House Democratic leadership tried to prevent a vote on the amendment in the House before last November's election. However, a discharge petition forced a vote on it on October 1, the last full day of the regular session. The amendment was approved by a majority (236 to 187), but not by the necessary two thirds. Again, the majority was bipartisan: 167 Republicans, 69 Democrats. In view of its near passage and the widespread public support for it, the amendment is sure to be reintroduced in the current session of Congress. Hence it remains a very live issue.

The amendment as adopted by the Senate would achieve two related objectives: first, it would increase the likelihood that the federal budget would be brought into balance, not by prohibiting an unbalanced budget but by making it more difficult to enact a budget calling for a deficit; second, it would check the growth of government spending—again, not by prohibiting such growth but by making it more difficult.

The amendment is very much in the spirit of the first ten amendments—the Bill of Rights. Their purpose was to limit the government in order to free the people. Similarly, the purpose of the balanced-budget-and-tax-limitation amendment is to limit the government in order to free the people—this time from excessive taxation. Its passage would go a long way to remedy the defect that has developed in our budgetary process. By the same token, it would make it more difficult for supporters of ever-bigger government to attain their goals.

It is no surprise, therefore, that a torrent of criticism has been loosed against the proposed amendment by people who believe that our problems arise not from excessive government but from our failure to give government enough power, enough control over us as individuals. It is no surprise that Tip O'Neill and his fellow advocates of big government tried to prevent a vote in the House on the amendment, and used all the pressure at their command to prevent its receiving a two-thirds majority.

It is no surprise, either, that when the amendment did come to a vote in the House, a substantial majority voted for it. After all, in repeated opinion polls, more than three quarters of the public have favored such an amendment. Their representatives do not find it easy to disregard that sentiment in an open vote—which is why Democratic leaders tried to prevent the amendment from coming to a vote. When their hand was forced, they quickly introduced a meaningless substitute that was overwhelmingly defeated (346 to 77) but gave some representatives an opportunity to cast a recorded vote for a token budget-balancing amendment while at the same time voting against the real thing.

I have been much more surprised, and dismayed, by the criticism that has been expressed by persons who share my basic outlook about the importance of limiting government in order to preserve and expand individual freedom—for example, the editors of The Wall Street Journal and a former editor and current columnist, Vermont Royster. They do not question the objectives of the

amendment, but they doubt its necessity and potential effectiveness.

Those doubts are presumably shared by many other thoughtful citizens of all shades of political opinion who are united by concern about the growth of government spending and deficits. Here, for their consideration, are my answers to the principal objections to the proposed amendment that I have come across, other than those that arise from a desire to have a still-bigger government:

1. *The amendment is unnecessary. Congress and the President have the power to limit spending and balance the budget.*

Taken seriously, this is an argument for scrapping most of the Constitution. Congress and the President have the power to preserve freedom of the press and of speech without the First Amendment. Does that make the First Amendment unnecessary? Not surprisingly, I know of no one who has criticized the balanced-budget amendment as unnessary—however caustic his comments on congressional hypocrisy—who would draw the conclusion that the First Amendment should be scrapped.

It is essential to look not only at the power of Congress but at the incentives of its members—to act in such a way as to be reelected. As Phil Gramm, a Democratic congressman from Texas, has said: "Every time you vote on every issue, all the people who want the program are looking over your right shoulder and nobody's looking over your left shoulder. . . . In being fiscally responsible under such circumstances, we're asking more of people than the Lord asks."

Under present arrangements, Congress will not in fact balance the budget. Similarly, a President will not produce a balanced budget by using the kind of vetoes that would be required. The function of the amendment is to remedy the defect in our legislative procedure that distorts the will of the people as it is filtered through their representatives. The amendment process is the only effective way the public can treat the budget as a whole. That is the function of the First Amendment, as well—it treats free speech as a bundle. In its absence, Congress would consider each case "on its merits." It is not hard to envisage the way unpopular groups and views would fare.

2. *The President and Congress are guilty of hypocrisy in voting simultaneously for a large current deficit and for a constitutional amendment to prevent future deficits.*

Of course, I have long believed that congressional hypocrisy and shortsightedness are the only reasons there is a ghost of a chance of getting Congress to pass an amendment limiting itself. Most Members of Congress will do anything to postpone the problems they face by a couple of years—only Wall Street has a shorter perspective. If the hypocrisy did not exist, if Congress behaved "responsibly," There would be no need for the amendment. Congress' irresponsibility is the reason we need an amendment and at the same time the reason that there is a chance of getting one.

Hypocrisy may eventually lead to the passing of the amendent. But hypocrisy will not prevent the amendment from having important effects three or four years down the line—and from casting its shadow on events even earlier. Congress will not violate the Constitution lightly. Members of Congress will wriggle and squirm; they

will seek, and no doubt fund, subterfuges and evasions. But their actions will be significantly affected by the existence of the amendment. The experience of several states that have passed similar tax-limitation amendments provides ample evidence of that.

3. *The amendment is substantive, not procedural, and the Constitution should be limited to procedural matters. The fate of the prohibition amendment is a cautionary tale that should give us pause in enacting substantive amendments.*

If this amendment is substantive, so is the income-tax (sixteenth) amendment and so are many specific provisions of the Constitution. The income-tax amendment does not specify the rate of tax. It leaves that to Congress. Similarly, this amendment does not specify the size of the budget. It simply outlines a procedure for approving it: the same as now exists if total legislated outlays do not exceed an amount determined by prior events (the prior budget and the prior growth in national income); and by a majority of 60 percent if total legislated outlays do exceed that amount. The requirement of a supernormal majority is neither substantive nor undemocratic nor unprecedented. Witness the two-thirds majority necessary to override a presidential veto or to approve a treaty.

The prohibition amendment was incompatible with the basic aim of the Constitution, because it was not directed at limiting government. On the contrary, it limited the people and freed government to control them. The balanced-budget-tax-limitation amendment is thoroughly compatible with the basic rule of the Constitution, because it seeks to improve the ability of the public to limit government.

4. *The amendment is unduly rigid, because it requires an annually balanced budget.*

This is a misconception. Section 1 of the amendment prohibits a *planned* budget deficit unless it is explicitly approved by three fifths of the members of the House and Senate. It further requires the Congress and the President to "ensure that actual outlays do not exceed the outlays set forth in [the budget] statement." But it does not require that actual receipts equal or exceed statements receipts. A deficit that emerged because a recession produced a reduction in tax receipts would not be in violation of the amendment, provided that outlays were no greater than statement outlays. This is a sensible arrangement: outlays can be controlled more readily over short periods than receipts.

I have never been willing to support an amendment calling for an annually balanced budget. I do support this one, because it has the necessary flexibility.

5. *The amendment will be ineffective because* (a) *it requires estimates of receipts and outlays, which can be fudged;* (b) *its language is fuzzy;* (c) *The Congress can find loopholes to evade it;* (d) *it contains no specific provisions for enforcement.*

(a) It will be possible to evade the amendment by overestimating receipts—but only once, for the first year the amendment is effective. Thereafter, section 2 of the amendment limits each year's statement receipts to the prior year's statement receipts plus the prior rate of increase of national income. No further estimates of budget receipts are called for. This is one of the overlooked subtleties in the amendment.

Any further fudging would have to be of the national-income estimates. That is possible but both unlikely and not easy. What matters is not the *level* of national income but the percentage *change* in national income. Alterations of the definition of national income that affect levels are likely to have far less effect on percentage changes. Moreover, making the change in income artificially high in one year will tend to make it artifically low the next. All in all, I do not believe that this is a serious problem.

(b) The language is not fuzzy. The only undefined technical term is "national income." The amendment also refers to "receipts" and "outlays," terms of long-standing usage in government accounting; in section 4, total receipts and total outlays are defined explicitly.

Nor is the amendment a hastily drawn gimmick designed to provide a fig leaf to hide Congress' sins. On the contrary, it is a sophisticated product, developed over a period of years, that reflects the combined wisdom of the many persons who participated in its development.

(c) Loopholes are a more serious problem. One obvious loophole—off-budget oulays—has been closed by phrasing the amendment in terms of total outlays and defining them to include "all outlays of the United States except those for repayment of debt principal." But other, less obvious, loopholes have not been closed. Two are particularly worrisome: government credit guarantees, and mandating private expenditures for public purposes (e.g., antipollution devices on automobiles). These loopholes now exist and are now being resorted to. I wish there were some way to close them. No doubt the amendment would provide an incentive to make greater use of them. Yet I find it hard to believe that they are such attractive alternatives to direct government spending that they would render the amendment useless.

(d) No constitutional provision will be enforced unless it has widespread public support. That has certainly been demonstrated. However, if a provision does have widespread support—as public-opinion polls have clearly shown that this one does—legislators are not likely to flout it, which brings us back to the loopholes.

Equally important, legislators will find it in their own interest to confer an aura of inviolability on the amendment. This point has been impressed on me by the experience of legislators in states that have adopted amendments limiting state spending. Prior to the amendments, they had no effective defense against lobbyist urging spending programs—all of them, of course, for good purposes. Now they do. They can say: "your program is an excellent one; I would like to support it, but the total amount we can spend is fixed. To get funds for your program, we shall have to cut elsewhere. Where should we cut?" The effect is to force lobbyists to compete against one another rather than form a coalition against the general taxpayer.

That is the purpose of constitutional rules; to establish arrangements under which private interest coincides with the public interest. This amendment passes that test with flying colors.

6. *The key problem is not deficits but the size of government spending.*

My sentiments exactly. That is why I have never supported an amendment directed solely at a balanced budget. I have written re-

peatedly that while I would prefer that the budget be balanced, I would rather have government spend $500 billion and run a deficit of $100 billion than have it spend $800 billion with a balanced budget. It matters greatly how the budget is balanced, whether by cutting spending or by raising taxes.

In my eyes, the chief merit of the amendment recommended by the Senate Judiciary Committee is precisely that is does limit spending. Section 1 requires that statement outlays be no greater than statement receipts; section 2 limits the maximum increase in statement receipts; the two together effectively limit statement outlays. Moreover, if in any year Congress manages to keep statement receipts and outlays below the maximum level, the effect is to lower the maximum level for future years, thus fostering a gradual ratcheting down of spending relative to national income.

A further strength of the amendment is the provision for approving an exceptional increase in statement receipts (hence in statement outlays). The spending-limitation amendment that was drafted by the National Tax Limitation Committee required a two-thirds majority of both houses in order to justify an exceptional increase in outlays. The amendment passed by the Senate requires only "a majority of the whole number of both houses of Congress." However, the majority must vote for an explicit tax increase. I submit that it is far easier to get a two-thirds majority of Congress to approve an exceptional increase in spending than to get a simple majority to approve an explicit increase in taxes. So this is a stronger, not a weaker, amendment.

Section 6, proposed by Senator Armstrong in the course of Senate debate, makes the debt ceiling permanent and requires a supermajority vote to raise it. That provision was approved by a narrow majority composed of a coalition of right-wing Republicans and left-wing Democrats—the one group demonstrating its hard-core conservatism, the other seeking to reduce the chances of adoption of the basic amendment.

I do not favor the debt-limit provision. Its objective—to strengthen pressure on Congress to balance the budget—is fine, and it may be that it would do little harm. But it seems to me both unnecessary and potentially harmful. I trust that it will be eliminated if and when the amendment is finally approved by Congress. I shall favor the amendment even if the debt-limit provision is left in, but less enthusiastically.

7. *The amendment introduces a new economic theory into the Constitution.*

It does nothing of the kind—unless the idea that there should be some connection between receipts and outlays is a new economic theory. The amendment does not even change the present budget process, *if* Congress enacts a balanced budget that rises by no greater a percentage than does national income. But it does significantly stiffen the requirement for passing a budget that is in deficit or for raising the fraction of our income spent on our behalf by the government.

The amendment recommended by the Senate Judiciary Committee deserves the wholehearted backing of every believer in a limited government and maximum freedom for the individual.

PROPOSED CONSTITUTIONAL AMENDMENT

SECTION 1. Prior to each fiscal year, the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts. The Congress may amend such statement provided revised outlays are no greater than revised receipts. Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipts by a vote directed solely to that subject. The Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth in such statement.

SECTION 2. Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the year or years ending not less than six months nor more than twelve months before such fiscal year, unless a majority of the whole number of both Houses of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.

SECTION 3. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

SECTION 4. Total receipts shall include all receipts of the United States except for those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principal.

SECTION 5. The Congress shall enforce and implement this article by appropriate legislation.

SECTION 6. On and after the date this article takes effect, the amount of Federal public debt limit as of such date shall become permanent and there shall be no increase in such amount unless three-fifths of the whole number of both Houses of Congress shall have passed a bill approving such increase and such bill has become law.

SECTION 7. This article shall take effect for the second fiscal year beginning after its ratification.*

*It should be re-emphasized that S.J. Res. 58 as approved by the Senate during the 97th Congress is similar although not identical to the present amendment.

ADDITIONAL VIEWS OF MR. DENTON

I believe that we face a crisis of confidence among the American public. Most taxpayers simply do not believe that Congress has the willpower to cut spending and balance the federal budget. This mistrust appears well-founded when one reviews the history of statutory efforts to reform the budget process and restrain spending.

The prudent and responsible management of public funds is a fundamental requirement of government. I am afraid that statutory approaches to reasserting that important principle will continue to fail. Only the enactment of a constitutional amendment will explicitly mandate fiscal responsibility and be enforceable by and on future Congresses.

In drafting this constitutional amendment, we must not lose sight of the fundamental responsibility of the federal government, as stated in the preamble of the Constitution, to "provide for the common defence." This is not an option but the transcendental requirement of the government, and we do no service for our country or in fulfillment of our obligations as Senators when we ignore that fact.

We in the Congress have too often fallen into the dangerous trap of viewing "providing for the common defence" as if that requirement were only one of several competing requirements of equal priority. Clearly the common defense is more important than, for example, welfare or education assistance or even the size of the national debt. If our country is not secure, then those other requirements are meaningless.

Many of my colleagues prefer to pass a balanced budget constitutional amendment without a specific national security waiver provision because such a provision, they believe, is too broad and open to too much interpretation. They say that if our country faces a genuine, imminent threat to the national security, they are confident that at least three-fifths of both Houses of Congress would be willing to authorize a deficit in order to finance the military preparation necessary to meet that threat.

I sincerely hope that they are correct in their judgment. I too am fairly confident that at least three-fifths of this body would respond through whatever means necessary, and without hesitation, to meet any imminent national security threat. I am also reasonably confident that that will be the case 5, 10, and 100 years from now. *But I am not absolutely sure.*

There are several examples in history which demonstrate that some votes on issues crucial to our national security have been quite controversial and would not have passed had a three-fifths majority requirement been in effect. For example, prior to 1936 the Washington Treaty limited the authorized naval strength of the United States, Great Britain and Japan to a 5–5–3 ratio, respectively. When the naval limitation treaty expired in 1936, Great Britain

and Japan began building in excess of all prior treaty limitation. H.R. 9218 was introduced to authorize sufficient build-up of our naval strength to reach the 5-5-3 ratio.

The report of the House Committee on Naval Affairs on H.R. 9218 stated: "it is essential to have, for our proper national defense, the increase provided in this bill, or else the security of our Nation is jeopardized. . . . The increase authorized in this bill will furnish the minimum national defense necessary to attain our national security and preserve our Republic." Senator Walsh stated in support of the bill: "The question which the bill presents, and the only question, is the question of national security and safety, and, to that end, the maintenance of an adequate navy." The bill passed the Senate on 3 May 1938 by a vote of 56 to 28, two votes short of a three-fifths majority.

After the outbreak of World War II, Congress passed the Neutrality Act of 1939, the "Cash and Carry" Act, permitting belligerent nations to purchase war materials in the United States and transport them abroad in their own vessels with payment only in cash. This made American industrial power available to our allies. By the end of 1940, Great Britain could not hope to acquire the necessary dollars to keep on buying the weapons they needed. By the middle of December, British contracting for United States goods in this country had virtually ceased. President Roosevelt urged Congress to pass a bill allowing the manufacture and provision of weapons to nations at war with axis powers so that the flow of necessary weapons to Britain would not be stopped.

In response to the President's request, Congress passed H.R. 1776, the Lend-Lease Act, which empowered the President to authorize the various heads of government departments and agencies to manufacture and procure "defense articles" for the government of any country whose defense the President deemed vital to the defense of the United States and to exchange, lease, lend, or otherwise dispose of defense articles to such countries.

According to then Secretary of War Stimson, the Lend-Lease Act was one of the most important legislative achievements of the entire war. The House of Representatives Committee on Foreign Affairs concluded in their report on H.R. 1776: "It is the firm opinion of your committee, that taking into consideration existing world conditions, prompt enactment of H.R. 1776 into law is of the highest importance to the vital interests of our country—and even of our civilization."

The Senate vote on H.R. 1776 was 60 to 31, only 2 votes over a three-fifths majority. The House vote was 260 to 165, 1 vote short of a three-fifths majority.

These are examples of how the perception of a threat to our national security can be very controversial before we are actually engaged in a military conflict. It underscores the need to preserve as much flexibility as possible for Congress to act in the face of a national security threat. When we are debating whether a constitutional amendment might diminish in any way our ability or flexibility to protect the national security, we *must make every effort to ensure that it will not!* We cannot gamble with the ability of our children and of their children to protect the security of this nation. In the dynamic geopolitical situation of today, how can we attempt

to predict what types of threat to our national security we may face many years hence?

Furthermore, a future threat to our national security may not necessarily be a military threat to our country. It may be a threat to another country which is vital to our national security, or it may even be a terrorist threat mounted on such a scale that our national security is genuinely threatened. We must be careful to take these possibilities into account when we fashion a balanced budget amendment.

Finally, let us dispense with any suggestion that it is defense spending that has caused our current budgetary problems and that irresponsible defense spending might undermine the proposed amendment. I point out to my colleagues that the proportion of the federal budget that is spent on defense has declined by nearly half during the past 25 years. When John F. Kennedy was President, we spent nearly one-half of the Federal budget on defense and about one-quarter of it on social programs. Now the proportions are reversed, and we spend more than half of the Federal budget on social programs and only slightly more than one-quarter on defense.

As important as a balanced budget is to the well-being of our nation, we cannot force a balanced budget at the expense of our ability to protect the national security.

ADDITIONAL VIEWS OF MR. HEFLIN

Senate Joint Resolution 13, the constitutional amendment to balance the federal budget, reported favorably by the Committee on the Judiciary, is indeed a positive step toward fiscal responsibility. Congress must take the initiative to enact and send to the people a resolution to balance the federal budget. I have supported such a concept since coming to the United States Senate, and I am committed to reducing the federal deficit which is crippling this nation's financial security. I am an original cosponsor of S.J. Res. 13. I will support passage of this resolution, but I believe it can be made stronger and more effective.

S.J. Res. 13 requires Congress to adopt a statement prior to the fiscal year in which outlays are not greater than receipts. Congress may provide for a specific excess of outlays over receipts by a three-fifths vote of each House of Congress. This language ensures a balanced statement at the beginning of a fiscal year. It does not ensure a balanced budget at the end of a fiscal year.

In order to make Congress more accountable for the end product of the budgetary process, there must be some self-enforcing provision that adds substance to the balanced budget amendment. In the 97th Congress, Senator William Armstrong (R-CO.), and Senator David Boren (D-OK.), proposed an enforcement mechanism, which was adopted by the Senate. The amendment requires a three-fifths vote to raise the debt limit of the United States after the balanced budget amendment becomes effective.

If the purpose of the balanced budget amendment is to allow for a planned deficit only by a three-fifths vote, then requiring a three-fifths vote to raise the debt limit after a deficit has actually occurred is perfectly consistent.

Under S.J. Res. 13, the initial statement of receipts and outlays is only a projection. It is an estimate of receipts and outlays for the fiscal year. While S.J. Res. 13 requires actual outlays not to exceed planned outlays, there is no guarantee that actual receipts will not fall below planned receipts. Therefore, even with the most careful projections, deficits may occur. S.J. Res. 13 exacts no price for an unplanned deficit.

If we are truly committed to living within the confines of a balanced budget, then Congress must be responsible for unplanned deficits as well as planned deficits. This amendment makes Congress just as accountable at the end of the fiscal year as it is at the beginning. Congress may also be more prudent in its initial projections if it must answer for its results.

I offered this amendment in Committee, but withdrew it based on the assurances of my colleagues that such a provision was being considered. I believe it is crucial to any workable and effective constitutional amendment to balance the budget.

The success of any constitutional amendment to balance the budget will require responsible legislating by each individual Member of Congress, participation of the executive branch and patience and sacrifice on the part of the American public. But Congress has a responsibility to enact not just a balanced budget amendment, but an amendment with vision—and one that can accomplish what it should accomplish—a budget we can live with, and live within.

MINORITY VIEWS OF MR. MATHIAS

The Senate Judiciary Committee has once again reported to the Senate a proposed constitutional amendment to provide for a balanced budget. This year, the Committee was unable to agree on a single formulation for this proposed amendment and has therefore reported two distinct proposals to the Senate for consideration.

While both proposed amendments purport to achieve the same result—balanced federal budgets, they take different approaches. S.J. Res. 13 is substantially similar to S.J. Res. 5 which was reported by this Committee in the 98th Congress. This proposed amendment requires anticipated revenues to equal anticipated receipts in each fiscal year. S.J. Res. 13 also restricts the ability of Congress to increase receipts by requiring that any increase in federal revenues above the rate of growth in national income must be specifically authorized by an act of Congress, passed by a majority of the membership of each house, "directed solely by approving specific additional receipts."

The other proposed constitutional amendment reported by the Committee, S.J. Res. 225, is terser in language, although I fear it will prove no less complex in application. This proposal simply provides that outlays for any fiscal year may not exceed revenues for that fiscal year. The difficulty that could arise from the fact that many months and many uncertainties separate the estimate of outlays and the collection of revenues is ignored.

SHORTCOMINGS OF THE PROPOSED AMENDMENTS

In my view, neither of these proposed amendments is adequate to the task of assuring balanced budgets. At best, either amendment will raise false expectations; at worst, either amendment could lead to concerted efforts to circumvent its provisions. This latter result would adversely affect enforcement of and respect for constitutional provisions generally.

The Committee's inability to propound a single formulation for the proposed amendment should warn us that the particular wording of a balanced budget amendment may be out-dated before its passage, especially since ratification is a lengthy process which may take several years to complete.

In addition, both of these proposed amendments open the door to unprecedented judicial involvement in the budget process. Neither amendment includes a specific enforcement mechanism. The committee rejected an amendment which would have granted explicit standing for citizens' suits to enforce both the balanced budget and tax limitation sections of the proposed amendments. The majority believes that judicial involvement would be rare because citizens would lack standing to complain of violations. But if this belief is correct, the amendment, in either form, is esentially unenforceable.

It therefore will not achieve its goal of a balanced federal budget. This failure could erode respect for other provisions of the Constitution. The passage of an unenforceable constitutional amendment is an excercise in public relations, not constitutional law.

If the majority is incorrect about standing to enforce the amendment, federal judges could become intimately involved in every facet of spending and taxing decisions. The judiciary could be called on to determine the constitutionality of virtually every tax and spending bill passed by Congress and signed by the President.

BALANCED BUDGETS TODAY

Why is the Judiciary Committee so eager to embark on a path that presents these and many other pitfalls? In my view, the support for a constitutional amendment on balanced budgets is based on a false premise—that the Constitution is somehow flawed, and that but for this error in the original drafting of the document, our fiscal house would be in order. I cannot agree with this assumption. The Constitution, without further amendment, grants ample power to the Congress and the President to adopt a balanced budget now.

The deficit problem is not the fault of inadequacies in the Constitution. It is the fault of Presidents of both parties who have proposed spending measures in excess of federal revenues without proposing equal taxes to finance those spending priorities. It is the fault of Congress which, although it has consistently reduced spending demands by all Presidents, has just as consistently been unwilling to deny any President's wishes to increase spending without increasing taxes.

Congress and the President share responsibility to propose and adopt balanced budgets. In the past five years alone, Congress has cut the deficit in budgets proposed by the President by over $167 billion. Yet both of the proposed amendments to the Constitution address only the legislative branch. Neither requires the executive to play any role in restricting federal spending or in proposing balanced budgets. In the 98th Congress, S.J. Res. 5, as reported by this Committee, included a requirement that the President propose a balanced budget. This year, however, this committee rejected the opportunity to include that requirement. Rather than recognizing the role of the President in the budget process, the Committee has acted as if Congress legislated in a vacuum. Our retreat from imposing executive as well as legislative responsibility further erodes confidence in these proposed amendment and cannot give the American people confidence that this Committee takes the problem of budget deficits seriously.

STATUTORY APPROACH

The best way to assure the American people that we are serious about the deficit is to vote for legislation that will bring the budget into balance. Throughout my career in Congress I have supported fiscally sound policies that require the federal government to limit spending to essential programs and to finance those programs through appropriate taxes. But if a majority of the Senate is not willing to vote for budget resolutions that will lead to a balanced

budget, another alternative, short of a constitutional amendment, should be considered.

I have consistently favored a statutory approach to the balanced budget question. It is often said that "Congress should not legislate in the dark." It is even more essential that Congress not amend the Constitution in the dark. A statutory approach could achieve immediate results, since, unlike a constitutional amendment, the statute could be effective immediately. Balanced budgets could be mandated immediately, not at the end of a lengthy ratification process.

In addition, the statutory approach could ameliorate some of the problems caused by our ignorance of the effects of mandating a balanced budget. We know very little about the impact of this proposed amendment on the economy, on federal finance, or on the separation of powers, particularly the relationship between the legislative and judicial branches. These questions should be fully and completley answered before we change the Constitution. A statutory approach would provide that opportunity. The Congress could discern the effect of particular language, ascertain the proper roles for the executive and judicial branches in the process of mandatory balanced budgets and revise any statute by the action of a simple majority of the Congress and Presidential concurrence.

A constitutional amendment has none of these virtues. Not only will it be ineffective today, during the period of greatest need, but any flaws discovered after ratification will have to be corrected by the time-consuming process of reamending the Constitution.

CONCLUSION

These proposed amendments raise more questions than they answer. Their benefits will not be felt for years, if at all. In the interim, they provide a poor substitute for real action to control the federal budget process. For these reasons, I oppose sending either of these proposed constitutional amendments to the Senate.

MINORITY VIEWS OF MR. METZENBAUM

The Judiciary Committee has voted to report two versions of a balanced budget amendment to the Senate. Both versions are fundamentally flawed proposals to tamper with the Constitution. Not only is the balanced budget amendment unworkable, it is highly deceptive. Proponents point to it as a cure for the Nation's fiscal crisis. In fact, it is just the opposite. It is a way to divert attention from the difficult task of taking responsible action.

The public has been led to believe the balanced budget amendment will painlessly eliminate massive deficits that plague our Nation's economic stability. This conception is a dangerous illusion.

Our current fiscal disaster is the result of a foolishly drastic tax cut in 1981, which many of us now regret, a reckless military buildup that has not made us more secure, and a failure to close tax loopholes that allow corporations and the wealthy to avoid their fair share of taxes. Only if we attack the cause of the deficits will we ever make a start on balancing the budget. This amendment, on the other hand, will be exploited for political gamesmanship when statesmanship is particularly necessary for responsible action.

BROAD-BASED OPPOSITION

The public should be highly suspicious of this amendment if for no other reason than so many serious analysts and political observers, of all political philosophies, have spoken out against it.

The National Council of Senior Citizens justifiably fears that it means "renewed attacks on social security, medicare and medicaid."

Paul Volcker, the Chairman of the Federal Reserve Board, testified that it isn't workable and can be used as a substitute for actually solving the deficit problem

Former President Ford said it would raise false hopes.

The Committee for Constitutional Integrity, a distinguished group of lawyers and law professors, says it would undermine the flexibility and diminish the integrity of the Constitution.

Columnist George Will says it is a "hoax," and a "trivialization of the Constitution."

Columnist James J. Kilpatrick says it is an "unenforceable, unintelligible amendment to the constitution that will get us nowhere."

Rudolph Penner, the Director of the Congressional Budget Office, testified that the balanced budget amendment "can be easily evaded" and that "it invites political stalemate."

Roy Ash, former Director of the Office of Management and Budget for Presidents Nixon and Ford, testified that the amendment would lead to a loss of fiscal control and accomplish the opposite of what its proponents claim.

The staff of President Reagan's own Office of Management and Budget prepared an internal report listing major flaws in the amendment and arguing strongly against it.

Despite informed, broad-based opposition, and a host of intractable substantive and procedural problems, rhetorical support for the amendment remains high and rises as the deficit situation worsens. It is no accident that, as the budget deficits soar, and the actual solution becomes more difficult, a misleading, oversimplified remedy becomes more attractive.

MISUSE OF THE CONSTITUTION

The amendment would misuse the Constitution to address problems that must be dealt with through legislative means. Annual economic and fiscal policies cannot and should not be imposed by the Constitution. There are too many contingencies, too many uncertainties that arise in the Nation's economic life to deal with them through the inflexible mechanism of a constitutional amendment.

The amendment is almost certainly unworkable in times of recession when social spending automatically increases as tax revenues fall. It provides for no national emergencies other than a formal declaration of war. During times of rapid social and economic change, Congress has historically been able to implement necessary taxing and spending decisions through regular legislative procedures. A constitutional amendment introduces the ominous element of an inflexible impediment that can only be modified with extreme difficulty—a protracted process of ratifying another constitutional amendment.

THE REVENUE LIMITATION PROVISION

Below I comment on the provisions of both versions of the amendment dealing with the relationship of outlays and expenditures. First, I turn to the specific provision in the "revenue limitation" form of the amendment that limits the growth in tax revenues. Section 2 prohibits federal revenues from growing faster than the rate of growth in national income unless legislation, limited solely to increasing taxes, has been enacted.

This provision attempts to prevent any automatic increase in tax revenues beyond those resulting from growth in the economy. Any additional growth in revenues would presumably require a tax cut or a refund unless a specific tax increase bill was enacted. Consequently, payroll taxes for Social Security and Medicare or other taxes would have to be cut to accommodate revenue increases which exceed the limitation. Such a limitation would also apply even if revenues were far short of expenditures.

It is very difficult to understand how this provision would be enforced. For example, it may become apparent that tax revenues will exceed the limitation only when there is little time left in the fiscal year for Congress to act. In theory, Congress would have to enact a tax cut to avoid violating the constitution and the tax cut would have to become effective immediately. These assumptions are highly unrealistic in most cases. If Congress fails to act, or

passes a tax cut that is still ineffective in reducing revenues sufficiently, the constitution is violated and taxpayer suits may result.

In addition, the revenue limitation provision can make a budget deficit more likely by placing a stringent limitation on the Nation's ability to collect revenue. For example, the provision may force Congress to enact a tax cut even if it is apparent that revenues already will fall short of expenditures. This bias toward limiting revenues, regardless of the Nation's needs, conflicts with the professed major purpose of the amendment—balancing the budget.

This provision also builds in a clear bias toward forced tax reductions. During a recession, national income falls and tax revenues fall as a result. However, there is a strong tendency for tax revenues to decline faster than national income because of the progressivity of the Tax Code. Consequently, during a recession, tax revenues will generally fall as a percentage of national income.

Since section 2 limits the increase in tax revenues to the rate of growth of national income in the prior year, the provision will limit the natural tendency of tax revenues to increase faster than the rate of increase from a recession. The result is to build in a bias toward a long-term reduction in tax revenues as a percentge of the Nation's total output.

This type of forced tax reduction threatens to undercut the country's ability to pay for essential programs such as defense, social security, medicare, education and other services. It is one thing for the Congress to reduce taxes in particular circumstances after informed debate. It is unwise, even reckless, to force long-term tax reductions through the Constitution.

In short, this section threatens to undercut revenues necessary to support essential Federal responsibilities for defense and social programs. It is inconceivable Congress could comply with it on a consistent basis, and it is likely to result in deficits by forcing Congress to cut taxes when more revenue is needed to balance the budget.

THE BALANCED BUDGET REQUIREMENT—FAILURE TO ACCOMMODATE ECONOMIC CYCLES

Attempting to balance the budget during a time of economic recession is a policy guaranteed to plunge the Nation into a deeper recession. As the economy spirals downward, tax revenues will decline and social spending—income and health care assistance and unemployment compensation—will automatically rise. These additional expenditures not only cushion the blow in economic hard times for those hardest hit by the recession, they also help restore overall economic activity and stability. Yet the amendment requires the exact opposite—major new taxes or cuts in spending—that will inevitably promote further deterioration of the economy.

As President Reagan's own OMB staff wrote:

> Since business cycle contractions are inherent in a free economy, the proposed policy rule would create artificial policy choices and political conflicts on a recurring basis, i.e., whether in the face of a contracting economy to: Raise taxes, radically reduce spending until recovery raises receipts; or achieve super-majorities to validate recession deficits.

Both versions reported by the committee purport to require that outlays not exceed receipts. Although there are two different approaches to implementing this limitation. The first version, referred to in this statement as the "revenue limitation" version, requires that Congress adopt a statement of receipts and outlays before a fiscal year begins. Further, Congress may amend this statement through the normal legislative process only in a way that keeps outlays less than revenues. As discussed further below, this version does not prohibit a deficit at all. Even one of hundreds of billions of dollars, from a reduction of tax revenues below the level adopted in the statement. The second version, referred to here as the "revenue permissive" version, flatly requires that outlays for the year not exceed receipts.

The "revenue limitation" version requires Congress to adopt a statement at the beginning of the year that reflects a balanced budget. If we are in the midst of a recession at that time, the fiscal policies Congress would have to adopt would be the precise opposite of those needed to pull the Nation back to economic recovery.

The "revenue permissive" version of the amendment has an even worse result in a time of economic downturn. Under the "revenue limitation" version, the requirement to balance the budget occurs only at the beginning of the fiscal year. A shortfall from revenue loss would be allowed without triggering the amendment as long as outlays did not exceed the level in the statement. However, the revenue permissive version prohibits any deficit at all, including one that results from a falloff in revenues. Consequently, the amendment would tend to force a tax increase or major cuts in social spending—unemployment compensation, health care, and Social Security benefits—at the time when economic suffering is greatest.

This perverse effect inherent in both versions has led many of the Nation's most prominent economists, including six American nobel laureates in economic science, four former Chairmen of the President's Council of Economic Advisers, and 11 past Presidents of the American Economic Association to oppose a balanced budget amendment.

It is true that Congress could always waive the provisions of the amendment with a three-fifths vote. However, the whole point of this "super-majority" requirement is to make it difficult to achieve. Since it would be difficult for Congress to vote a waiver, there will be substantial opportunities for legislative stalemate while a recession deepens and suffering by those hardest hit by the recession worsens.

Actual econometric simulations of the effect of the amendment bear out the seriousness of this problem. A Wharton econometric analysis estimated the impact of a hypothetical balanced budget requirement in effect in July 1981.

The analysis showed that the deep and painful recession the country endured would have turned into a major depression. Because Federal revenues declined so sharply, in order to balance the budget Federal spending would have had to have been reduced by an additional $191.5 billion in fiscal year 1982 and $206.9 billion in fiscal year 1983. By fiscal year 1983, Congress would have been forced to slash by more than half unemployment compensation, all

education and social service programs, the SSI and AFDC income assistance programs, veteran's programs, Medicare, Medicaid, and every other Federal program besides Defense, Social Security, and interest on the national debt.

A similar analysis conducted by Data Resources, Inc., a firm whose econometric model is widely used in Government and industry, showed the same results. DRI made projections based on alternative assumptions, first that the amendment took effect during a period of economic decline. The results of both economic simulations were deep recessions with record high unemployment.

DISTORTING POLICY DECISIONS

Because the amendment would create major roadblocks to Congress ability to deal with changes in economic conditions, it will undoubtedly introduce distortions in policy decisions as Congress is forced to abide by the amendment's limitations. *There is a clear bias in favor of a tax increase to correct deficits that become apparent in the latter part of the fiscal year.* As the OMB staff report points out, "An annual balanced budget rule is inherently biased toward higher taxes rather than lower spending because: cash flow changes owing to tax policy can be enacted, implemented, and realized in three months . . . cash flow changes owing to spending policy require three months to three years to enact, implement and realize in most cases—or even longer . . ."

Defense outlays for Major Weapon systems, as well as certain other outlays, are the result of spending decisions often made years earlier. It is absurd to believe that Congress could, on short notice as a fiscal year draws to a close, make changes in budgetary policy with a major effect on current year outlays. Moreover, relying on spending cuts would be particularly difficult because correcting a budget imbalance would require a proportionally greater cut in program spending the later it is made in the fiscal year.

Second, there will be an irresistible temptation to convert more spending to misleading "off budget" status in order to avoid the effects of the amendment. "Off budget" spending has grown steadily over recent decades and is now about $16 billion. Roy L. Ash, former Director of the Office of Management and Budget, testified that the amendment will encourage subterfuges to load spending on to the private sector so it will not appear as government spending. However, as he put it: "The costs don't disappear; they're just not a part of the official budget but show up in prices instead."

There are other "escape hatches" for a Congress forced to deal with the realities of fiscal policy but hamstrung by the amendment, including transferring responsibility to the private sector through the gimmicks of tax credits and loan guarantees. These effects are not simply loopholes, but serious distortions in economic policymaking, leading to misleading information about actual budget policy and less accountability to the public.

THE DECLARATION OF WAR PROVISION

Both versions of the amendment reported by the committee allow Congress to waive the amendment when a declaration of war is in effect. During an actual declared war, the Nation would un-

doubtedly incur large deficits and Congress would quickly enact a waiver resolution. However, the history of the nation shows very few examples of a declared war. There has been no declaration of war in effect since World War II even though the United States has been involved in major military conflicts in Korea and Vietnam as well as more limited conflicts elsewhere. The amendment's limitations would greatly hamper the ability of the Congress to appropriate funds for emergency military action.

A three-fifths vote in both Houses of Congress will not be easily achieved, particularly if there is dispute about the involvement of the United States in the conflict. The result is to place a dangerous limitation on the flexibility of the nation to respond in military emergencies.

ENFORCEABILITY PROBLEMS

The amendment has a host of enforceability problems that make it almost impossible to implement in the way its proponents argue. First, every key term in the amendment—outlays," "National income," and "Statement of receipts"—is undefined. None of these terms has a precise, universally accepted meaning and each is subject to manipulation and lengthy disputes. "Outlays"—actual Government expenditures—are clearly different from appropriations—decisions by Congress for funds to be expended. Outlays, in fact, are often based on appropriation decisions that occurred years earlier. The amendment is also unclear in the treatment of government loan guarantees and other off-budget expenditures.

Both versions of the amendment reported by the committee make totally unrealistic assumptions about the ability of Congress to estimate accurately expenditures and revenues. The "revenue limitation" version requires Congress to make an estimate of outlays and revenues prior to the beginning of the fiscal year. In reality, recent administration projections of tax revenues and outlays have been widely out of line with actual events. For example, OMB in submiting the President's budgets, assumed deficits of $45 billion, $91.5 billion, and $189 billion for fiscal years 1982-84. Based on the same policy assumptions the Congressional Budget Office projected deficits of $67 billion, $120.6 billion, and $176 billion. The actual deficits for those years turned out to be $110.6 billion, $195.4 billion, and $185.3 billion.

Even if an administration does not systematically understimate the likely deficits of its budget proposals, there is a high degree of inherent uncertainty in spending and revenue projections. It is impossible to guarantee congressional budget decisions at the beginning of a fiscal year will lead to a balanced budget at the end of the year.

Since it is inevitable that there will often be a wide divergence between the projections at the beginning of the year. Congress would have to revise the budget throughout the year to keep it in balance. However, the "revenue limitation" version only requires that outlays do not exceed the outlays projected at the beginning of the year. Consequently, under this version Congress and the President can ignore the effect of tax revenues on the deficit. An enor-

mous deficit can occur because of a tax giveaway or other loss of tax revenue without triggering the amendment.

For example, during the beginning of the administration, the White House consistently assured the country that the deficits would be far smaller than those we actually experienced. The President assured us that the budget could be balanced in a few years, even with his massive tax cut and military buildup. The results of these reckless policies are now painfully clear. In January 1981, OMB estimated the deficit for fiscal year 1982 would be $27.5 billion and for fiscal year 1983, $8.0 billion. The actual deficits were $57.9 billion and $110.6 billion. These huge deficits were largely the result of revenue shortfalls. The "revenue limitation" version of the amendment would permit huge deficits from revenue losses, either from a recession or irresponsible tax cuts.

The "revenue permissive" version of the amendment is even more unrealistic by attempting to require flatly that outlays not exceed receipts at the end of the year without a three-fifths vote. Not only will this version lead Congress to try to increase taxes and cut spending during a recession, it will lead to consistent noncompliance because of the inability of the Government to plan accurately for fluctuations in revenues and expenditures.

The OMB staff report admits that actual outlays would not be known until the final days of the fiscal year because of delays in obtaining complete information. According to the staff report, under a $700 billion annual outlay limitation, an overrun of $50 billion would not be realized until 24 days before the end of the fiscal year. There is no realistic way Congress could decide upon a $50 billion adjustment that could take effect in 3 weeks. As the OMB report states: "Under almost all circumstances, no remedial action could be taken to reduce outlays in the last month." In fact, according to the report, the final total of the fiscal year's outlays will not be known until after the fiscal year is over the Congress could not make effective adjustments.

Even small errors in estimating revenues and expenditures will lead to deficits that are impossible to eliminate in the last days of a fiscal year. For example, if congressional estimates of the budget are off by 2%, the deficit resulting from a $1 trillion budget is $20 billion. The balanced budget amendment, particularly the "revenue permissive" version, can only pretend that congress will be able to make adjustments of this size in the final days of a fiscal year, to have an effect on the budget during that year.

The amendment is extremely unclear on how it would be enforced. The committee's report states that the committee has "chosen consciously not to prohibit judicial review altogether of 'cases or controversies' arising in the context of the proposed amendment . . ." (P. 69). The majority report assumes that the "political question" doctrine of *Baker* v. *Carr*, 369 U.S. 186 (1962), and the requirement of a justicable case or controversy (see E.G., *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227 (1937)) mean that private litigation over compliance with the amendment would be minimized.

In fact, however, some have argued there will be massive litigation by organizations and individuals challenging spending and taxing decisions. The Committee on Federal Legislation of the New

York City Bar Association commented in regard to the amendment reported in the 97th Congress:

> The amendment . . . will involve the judiciary in the budgetary process extensively in that it seems likely that there will be a host of lawsuits—annually recurring—challenging particular expenditures and appropriations and every attempt to raise or lower taxes.

Judge Bork of the District of Columbia Court of Appeals wrote:

> The result of such an amendment would likely be hundreds, if not thousands, of lawsuits around the country, many of them on inconsistent theories and providing inconsistent results. By the time the Supreme Court straightened the whole matter out the budget in question would be at least four years out of date and lawsuits involving the next three fiscal years would be climbing toward the Supreme Court.

Proponents of the amendment argue that there will be little litigation concerning the amendment because the standing requirements are difficult to meet. But, if no one has standing, who will enforce the amendment, at all? During committee consideration, I proposed allowing individual citizens to bring suit to enforce the amendment, but it was clear that the majority of the committee did not favor allowing ordinary citizens to enforce it. However, the absence of any way to enforce the amendment means that Congress could ignore it and the public could do nothing. The public will soon grow cynical about an amendment passed with a great fanfare of promises that proves to be unworkable and unenforceable.

Finally, the amendment does not *require* a balanced budget. It allows a 60% vote by both Houses of Congress to avoid its harmful and restrictive effects. In fact, the answer of many of the amendment's proponents to the host problems it presents is that Congress is not bound by it if it achieves these super-majority votes. This argument is the equivalent of saying: "Don't worry about the amendment. It will be easy to get around it." This is not only the weakest type of argument for tampering with the Constitution in such a fundamental way, it is wrong. It will *not* be easy to get around the amendment.

A minority of either House can insist on compliance with the amendment, or insist that particular spending or taxing decisions be made as the price to be paid for the unacceptable risks of a constitutional crisis. Furthermore, the uncertainties of when super-majority resolutions are necessary and the likely need for periodic additional resolutions will inevitably raise a host of questions about the constitutional validity of spending and tax decisions. For example, even if Congress by a super-majority vote, enacts a resolution allowing a particular deficit level, the actual deficit may turn out to be higher. In fact, in times of economic instability it is extremely likely that a congressional super-majority resolution will not adequately foresee the final outlays and receipts for the year. If the year ends and Congress has failed to enact an additional revised

resolution, litigation challenging the validity of spending and tax collection is certain to ensure.

Similarly, if Congress underestimates tax receipts because of economic growth and fails to pass a specific resolution called for in section 2 of the "revenue limitation" form of the amendment, the limitation of section 2 could easily be violated. If unexpected tax receipts even marginally exceed the year's increase in national income—itself impossible to estimate precisely—the Federal courts may be faced with taxpayer suits demanding court-ordered refunds or cancellation of spending programs.

ABSENCE OF PRESIDENTIAL INVOLVEMENT

One of the greatest ironies in the debate over the balanced budget amendment is that the greatest proponent of the balanced budget amendment, President Reagan, is the person most responsible for huge deficits. This administration has proposed budgets with massive deficits from its first days in office. It has never come close to proposing a balanced budget and it has never recommended changes to spending or tax policies that would result in one in the foreseeable future.

The table below shows the deficits estimated by CBO under the President's own budget submissions.

Administration Proposal—CBO

Estimate of deficit fiscal year:	*Billions*
1982	$67
1983	137
1984	176
1985	180
1986	186

Despite the absolutely essential role that the President plays in keeping the budget in balance, neither version of the amendment requires any role whatsoever by the chief executive. The original version of S.J. Res. 13 provided that the President should submit a statement "consistent with" the provisions of the amendment. This cryptic and vague phrase did not obligate the President to submit a balanced budget, as indicated by the debate over a similar provision in the committee during the 98th Congress. However, even this minimal involvement by the President was eliminated by the committee. Consequently, the present pattern of the President proposing reckless budget deficits—followed by the President blaming Congress for them—is allowed to continue.

During committee consideration. I offered an amendment to require that the President submit a balanced budget to the Congress. Nothing would have precluded the President from submitting other budget analyses or recommendations, but at the very least, the President would have been required to propose how the budget could be balanced. This amendment was defeated.

DIVERTING ATTENTION FROM OUR FISCAL CRISIS

Probably the worst aspect of this amendment is that it diverts congressional and public attention from the urgent and real problem that faces us—massive deficits looming indefinitely on the horizon. The amendment is a political free lunch, holding out the

false promise that a simply worded constitutional amendment can solve painlessly our impending fiscal crisis.

The idea that this amendment serves as a substitute for responsible fiscal policy *now* is an illusion. The amendment would almost certainly not take effect for three years. Even under the most extreme assumptions. The average time for ratification of amendments to the Constitution is one year and eight months. Further, the amendment would not take effect until the second fiscal year beginning after its ratification. Consequently, in the unlikely event that this amendment is approved by both Houses of Congress by October 1, 1988, it would not take effect until fiscal year 1990. Our fiscal house must be put in order long before this amendment is likely to become effective.

There is no possible way to correct the mistakes of the past without imposing revisions to the Tax Code, to make it fair and to close loopholes, cutting the President's massive defensive buildup and closely reviewing domestic spending. Yet this President, who holds out the balanced budget amendment as our solution to the deficits, has never come close to *proposing* a balanced budget.

The hard reality is that the component of the budget that is pointed to as the place to cut—controllable, non-entitlement, non-defense spending—is about 15% of expenditures. This portion of the budget could be eliminated *entirely* and the deficit would not be eliminated. Pretending that a balanced budget amendment, if it were in effect now, would make this problem go away is the worst form of self-deception.

CONCLUSION

In short, the balanced budget amendment is a charade. Its principal effect is to mislead the public into believing there is a simple and painless solution to massive deficits. It is a blatant misuse of the constitutional amendment process. The solution is for the President to be responsible and propose a balanced budget and for Congress to stop talking out of both side of its mouth and vote for one.

MINORITY VIEWS OF MR. SIMON

I support the concept of a constitutional amendment to balance the budget. I commend Chairman Thurmond and the sponsors of this bill for bringing the urgent need for controlling Federal deficits to the attention of Congress and the American people. However, I cannot support S.J. Res. 13. This attempt at a balanced budget amendment is not written in the spirit or style of a constitutional amendment.

My primary concern over this amendment stems from the wording of section 2 which prohibits increasing taxes beyond the growth in national income for a given year. This has almost nothing to do with balancing the budget. In fact it may be a barrier to this process. In other amendments to the constitution we have left decisions regarding implementation to future Congresses. We did not tell States how to effect Prohibition, nor did we make a progressive income tax part of the 16th amendment. Drafters of constitutional amendments have always recognized that political choices must be determined by Congress and the political system.

I want an amendment that will balance the budget, but I also want an amendment that our children and grandchildren can live with. The language of S.J. Res. 13 is not sufficiently flexible to allow for the changes that future generations will encounter.

This balanced budget amendment would permanently enshrine in our Constitution a restricted role for government in addressing the problems of our society. Whatever our own beliefs about the proper role of government, it is wrong to write this into the Constitution.

There is current popularity for efforts to reduce the role of government in our society. Given this popularity, people will elect representatives who work to reduce government. But the public will not always favored this. In 1964 the electorate overwhelmingly rejected a Presidential candidate who promised to implement policies similar to those that seem popular today.

This amendment would deny to tomorrow's citizens the power to choose the size of government they want. It will force the will of long-departed legislators on the political majority of tomorrow—on an issue which should most appropriately be addressed by them through their elected representatives at that time.

This amendment gives constitutional authority to the current political fashions and denies future Congresses the right fashion government. This amendment would increase our ability to make one kind of political choice—cutting taxes (already too easy), while imposing new and difficult barriers on another political choice—increasing certain government programs.

Section 2 would worsen periods of recession. Normally, government outlays rise during recessions, due to an increased demand for food stamps, unemployment benefits, and housing aid, among

other things. The expenditures on these programs protects citizens, stimulates the economy, and reduces the impact of a business slowdown. This amendment would make it much more difficult to use normal anti-recession policies.

If at some future time Congress felt it necessary to increase the gasoline tax by 10 cents for roads, bridges, and mass transit, under this particular amendment we would be forced to reduce expenditures in Social Security, education, or other areas of great need. We should not tie the hands of future legislators in that way. None of us knows what the future will bring.

Balancing the budget and ending these unprecedented deficits will be an enormous and difficult task. The right kind of balanced budget amendment is one necessary step. S.J. Res. 13, however, is not the answer. Indeed, it could create new nightmares. The much better answer is S.J. Res. 225 that calls for a balanced budget but avoids the treacherous quicksand of details that a constitutional amendment should not contain. I commend my colleagues, Senators Thurmond, Hatch, and DeConcini for sponsoring the better approach and I am pleased to be a cosponsor with the three of them.

Our Constitution is one of the older living public documents in the world. We have this unprecedented success not because the framers of that constitution anticipated every modern problem, but because they realized that such predictions were impossible. The language of our Constitution is broad and permits changes by each generation of lawmakers. When we amend the Constitution we must look for this needed flexibility. S.J. Res. 13 does not do so and I cannot support it.

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